



# भारत का राजपत्र The Gazette of India

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सं. 37] नई दिल्ली, सितम्बर 4—सितम्बर 10, 2016, शनिवार/भाद्र 13—भाद्र 19, 1938  
No. 37] NEW DELHI, SEPTEMBER 4—SEPTEMBER 10, 2016, SATURDAY/BHADRA 13—BHADRA 19, 1938

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक् संकलन के रूप में रखा जा सके  
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)  
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं  
Statutory Orders and Notifications Issued by the Ministries of the Government of India  
(Other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

( कार्मिक और प्रशिक्षण विभाग )

नई दिल्ली, 5 सितम्बर, 2016

का.आ. 1870.—केन्द्र सरकार, दिल्ली विशेष पुलिस स्थापन अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए गुजरात राज्य सरकार विधायी विभाग, सचिवालय, गांधीनगर की दिनांक 22 मई, 2015 की अधिसूचना सं. जीके/14/2015/एफसीआर/102014/05/ई द्वारा दी गई सहमति से एतद्द्वारा विदेशी अभिदाय (विनियमन) अधिनियम, 2010 (2010 का अधिनियम सं. 42) के अधीन दंडनीय सीबीआई, एसीबी, गांधीनगर द्वारा दर्ज किए केंद्रीय अन्वेषण ब्यूरो के मामले सं. 0292012 एस 0002 के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापन के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त गुजरात राज्य पर करती है।

[फा. सं. 228/71/2014-एवीडी-II]

एल. पी. शर्मा, अवर सचिव

**MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS**

**(Department of Personnel and Training)**

New Delhi, the 5th September, 2016

**S.O. 1870.**—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Gujarat, Legal Department, Sachivalaya, Gandhinagar vide Notification No. GK/14/2015/FCR/102014/05/E dated 22<sup>nd</sup> May, 2015, hereby extends the powers and Jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Gujarat for investigation of Central Bureau Investigation Case No. 0292012S0002 registered by CBI, ACB, Gandhinagar, punishable under the Foreign Contribution (Regulation) Act, 2010 (Act No. 42 of 2010).

[F. No. 228/71/2014-AVD-II]

L. P. SHARMA, Under Secy.

**उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय**

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 8 अगस्त, 2016

**का.आ.1871.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं :

**अनुसूची**

क्रम संख्या	लाइसेंस संख्या	स्वीकृत करने की तिथि	लाइसेंसधारी का नाम व पता	भारतीय मानक का शीर्षक	भा मा संख्या	भाग	अनु	वर्ष
1.	एल- 9512350417	15.02.2016	मै0 बॉम्बे ज्वैलर्स, मेन सदर बाज़ार, जिला गुडगाँव, हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ - महीनता एवं मुहरांकन	1417	-	-	1999
2.	एल- 9512350619	22.02.2016	मै0 बालाजी सिमेंट टाइल्स, समचाना रोड, गाँव व डाकघर हसनगढ़, सांपला, जिला रोहतक - 124404, हरियाणा	खड्डों के लिए पूर्व ढलित कंक्रीट ब्लॉक	15658	-	-	2006
3.	एल- 9512350518	24.02.2016	मै0 वी इ सी कन्ड्यूटस प्रा0 लि0, खसरा नं0 14/2, बेगमपुर खटोला, जिला गुडगाँव - 122001, हरियाणा	विद्युत संस्थापन के लिए नलिका फिटिंग भाग 2 धातु कन्ड्यूटस फिटिंग	14768	02	-	2003
4.	एल- 9512351015	24.02.2016	मै0 राठी पम्पस प्रा0 लि0, खसरा नं0 25/7/1 बैल्की	स्टेशनरी भंडारण टाईप विद्युतीय वाटर हीटर	2082	-	-	1993

			फार्मा रोड, एमआईई, भाग ए, बहादुरगढ़, जिला झज्जर – 124507, हरियाणा					
5.	एल- 9512351217	24.02.2016	मै0 एशियन कलर कोटिड इस्पात लि0, प्लॉट नं0 7-12, ग्रोथ सेक्टर, सैक्टर – 6, बाबल, जिला रिवाड़ी – 123005, हरियाणा	सतत पूर्व-रोगानित जस्तीकृत इस्पात की चददरें एवं कुंडलियाँ	14246	-	-	2013
6.	एल- 9512350720	25.02.2016	मै0 गह्लावत कन्सट्रक्शनस, गाँव व डाकघर समरगोपालपुर, टिटोली चौक से समरगोपालपुर रोड, जिला रोहतक - 124008, हरियाणा	खड़जे के लिए पूर्व ढलित कंक्रीट ब्लॉक	15658	-	-	2006
7.	एल- 9512351116	25.02.2016	मै0 दिव्या ज्वैलर्स, झज्जर सीमेंट वर्क्स, गाँव झारली, तहसील माटनहेल, जिला झज्जर – 124106 हरियाणा	स्वर्ण एवं स्वर्ण मिश्रधातु आभूषण/शिल्प वस्तुएँ – महीनता एवं मुहरांकन	1417	-	-	1999
8.	एल- 9512350821	26.02.2016	मै0 रिक्कोन्स पावर इक्यूपमेंट्स प्रा0 लि0, प्लॉट नं0 38, सैक्टर – 25, फरीदाबाद – 121004, हरियाणा	बाह्य रंग तेल इम्मेसड वितरण ट्रांसफार्मर भाग 1 मिनरल तेल निमिज्जित	1180	01	-	2014
9.	एल- 9512350922	29.02.2016	मै0 ओशियन हेल्थ गीविंग वाटर , नहर पार, गाँव भुदाना, सैक्टर – 86, तिगाँव रोड,	पैकेजबन्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	-	-	2004

			जिला फरीदाबाद – 121004, हरियाणा					
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[सं. सी एम डी/13:11]

जय पाल सिंह, अनुभाग अधिकारी

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION****(Department of Consumer Affairs)****(BUREAU OF INDIAN STANDARDS)**

New Delhi, the 8th August, 2016

**S.O.1871.**—In pursuance of sub-regulation (5) of the regulation 4 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given in the following schedule:

**SCHEDULE**

Sl. No.	Licences No. CM/L-	Grant Date	Name & Address of the Licensee	Title of the Standard	IS No.	Part	Sec	Year
1.	L-9512350417	15.02.2016	M/s Bombay Jewellers Main Sadar Bazar, Distt. Gurgaon, Haryana	Gold and Gold Alloys Jewellery/Artefacts - Fineness and Marking	1417	-	-	1999
2.	L-9512350619	22.02.2016	M/s Balaji Cement Tiles, Samchana Road, VPO Hassangarh, Sampla, Distt. Rohtak - 124404, Haryana	Precast Concrete Blocks for Paving	15658	-	-	2006
3.	L-9512350518	24.02.2016	M/s B E C Conduits Pvt. Ltd., Khasra No.14/2, Begampur, Khatola, Distt. Gurgaon – 122001, Haryana	Conduits Fittings for Electrical Installations Part 2: Metal Conduit Fittings	14768	02	-	2003
4.	L-9512351015	24.02.2016	M/s Rathi Pumps Pvt. Ltd., Khasra No.25/7/1 Belco Pharma Road, M.I.E., Part A, Bahadurgarh, Distt. Jhajjar – 124507, Haryana	Stationary Storage Type Electric Water Heaters	2082	-	-	1993
5.	L-9512351217	24.02.2016	M/s Asian Colour Coated Ispat Limited, Plot No.7-12, Growth Centre, Sector – 6, Bawal, Distt. Rewari – 123005, Haryana	Continuously Pre- Painted Galvanized Steel Sheets and Coils	14246	-	-	2013
6.	L-9512350720	25.02.2016	M/s Gahlawat Constructions, VPO Samargopalpur, Titoli Chowk Se Samargopalpur Road, Distt. Rohtak - 124008 Haryana	Precast Concrete Blocks for Paving	15658	-	-	2006

7.	L-9512351116	25.02.2016	M/s Divya Jewellers, LGF, Khandsa Road, Opp Rama Hospital, Distt. Gurgaon, Haryana	Gold and Gold Alloys Jewellery/Artefacts – Fineness and Marking	1417	-	-	1999
8.	L-9512350821	26.02.2016	M/s Recons Power Equipments Pvt. Ltd., Plot No.38, Sector – 25, Faridabad – 121004 Haryana	Outdoor Type Oil Immersed Distribution Transformers	1180	01	-	2014
9.	L-9512350922	29.02.2016	M/s Ocean Health Giving Water, Nehar Par, Village Bhudana, Sector-86, Tigaon Road, Distt. Faridabad-121004, Haryana	Packaged Drinking Water (Other than Packaged Natural mineral Water)	14543	-	-	2004

[No. CMD/13:11]

JAI PAL SINGH, Section Officer

नई दिल्ली, 8 अगस्त, 2016

**का.आ. 1872.**—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम (5) के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्वारा अधिसूचित करता है कि निम्न विवरण वाले लाइसेंसों को उनके आगे दर्शायी गई तारीख से रद्द/स्थगित कर दिया गया है :-

**अनुसूची**

क्रम संख्या	लाइसेंस संख्या सीएम/एल-	लाइसेंसधारी का नाम व पता	लाइसेंस के अंतर्गत वस्तु /प्रकम सम्बद्ध भारतीय मानक का षीर्षक	रद्द करने की तिथि
1	एल-2675772	मैसर्स स्वास्तिक पाइप्स लि. 41 कि.मी. दिल्ली रोहतक रोड, वीपीओ असौदा, जिला झज्जर, हरियाणा	3975 : 1999	03.02.2016

[सं. सी एम डी / 13:13]

जय पाल सिंह, अनुभाग अधिकारी

New Delhi, the 8th August, 2016

**S.O. 1872.**—In pursuance of sub-regulation (6) of the regulation 5 of the Bureau of Indian Standards (Certification) Regulations 1988, of the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given below have been cancelled/suspended with effect from the date indicated against each:

**SCHEDULE**

Sl. No.	Licences No. CM/L-	Name & Address of the Licensee	Article/Process with relevant Indian Standards covered by the licence cancelled/suspension	Date of Cancellation
1	L-2675772	M/s Swastik Pipes Ltd. 41 Km., Delhi Rohtak Road, VPO Asaudah, Distt. : Jhajjar, Haryana	IS 3975 : 1999	03.02.2016

[No. CMD/13:13]

JAI PAL SINGH, Section Officer

**युवा कार्यक्रम और खेल मंत्रालय**

नई दिल्ली, 30 अगस्त, 2016

**का.आ.1873.**—केन्द्रीय सरकार, एतद्द्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में, युवा कार्यक्रम और खेल मंत्रालय के स्वायत्तशासी कार्यालय राष्ट्रीय डोप परीक्षण प्रयोगशाला, जिसके 80% से अधिक कर्मचारीवृंद ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है।

[मि. सं. ई-11011/2/2008-हि.ए.]

एस.एल. मीना, उप सचिव

**MINISTRY OF YOUTH AFFAIRS AND SPORTS**

New Delhi, the 30th August, 2016

**S.O.1873.**—In pursuance of sub-rule (4) of Rule 10 of the Official Language (Use for official Purposes of the Union) Rules, 1976, the Central Government hereby notifies National Dope Testing Laboratory, New Delhi, an Autonomous office of Ministry of Youth Affairs and Sports, whereof more than 80% staff have acquired working knowledge of Hindi.

[F. No. E-11011/2/2008-H.U.]

S. L. MEENA, Dy. Secy.

**कोयला मंत्रालय**

नई दिल्ली, 8 सितम्बर, 2016

**का.आ. 1874.**—कोयला धारक क्षेत्र, (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उप-धारा (1) के अधीन जारी और भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्यांक का.आ.2274(अ.), तारीख 28 जून, 2016 जो भारत के राजपत्र, असाधारण, भाग II, खण्ड 3 उप-खण्ड (ii), तारीख 01 जुलाई, 2016 में प्रकाशित की गई थी, उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है) में और भूमि में या उस पर के सभी अधिकारों, उक्त अधिनियम की धारा 10 की उप-धारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप से केन्द्रीय सरकार में निहित हो गए हैं;

और केन्द्रीय सरकार का यह समाधान हो गया है, कि सेंट्रल कोलफील्ड्स लिमिटेड, रांची (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का जिन्हें केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है;

अतः अब, केन्द्रीय सरकार उक्त अधिनियम की धारा 11 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है, कि इस प्रकार निहित उक्त भूमि में के पूर्वोक्त सभी अधिकार केन्द्रीय सरकार में इस प्रकार निहित बने रहने के बजाए, तारीख 01 जुलाई, 2016 से निम्नलिखित निबन्धनों और शर्तों के अधीन रहते हुए सरकारी कंपनी में निहित हो जाएंगे, अर्थात् :-

- (1) सरकारी कंपनी, उक्त अधिनियम के उपबध्नों के अधीन यथा अवधारित प्रतिकर, व्याज, नुकसानियों और वैसी ही मदों की बाबत किए गए सभी संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;
- (2) सरकारी कंपनी द्वारा शर्त (1) के अधीन, उक्त सरकारी कंपनी द्वारा केन्द्रीय सरकारी कंपनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा तथा ऐसे किसी अधिकरण और उक्त अधिकरण की सहायता करने के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, उक्त सरकारी कंपनी द्वारा वहन किए जाएंगे और इसी प्रकार निहित उक्त भूमि में या

उस पर के अधिकारों के लिए या उनके संबंध में अपील आदि विधिक कार्यवाहियों की बाबत उपगत, सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे;

- (3) सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी जो इस प्रकार निहित उक्त भूमि में या उस पर के पूर्वोक्त अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो ;
- (4) सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमि और भूमि में या उसके ऊपर इस प्रकार निहित अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी ; और
- (5) सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं ।

[ फा.सं. 43015/9/2015 –पीआरआईडब्ल्यू-1 ]

सुजीत कुमार, अवर सचिव

### MINISTRY OF COAL

New Delhi, the 8th September, 2016

**S.O. 1874.**—Whereas on the publication of the notification of the Government of India in the Ministry of Coal, number S.O. 2274 (E), dated the 28th June, 2016, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 1st July, 2016, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the land and all rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) are vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act;

And whereas, the Central Government is satisfied that the Central Coalfields Limited, Ranchi (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the said Act, the Central Government hereby directs that the all rights in or over the said land so vested, shall, with effect from 1<sup>st</sup> July, 2016, instead of continuing to so vest in the Central Government shall vest in the Government Company, subject to the following terms and conditions, namely:-

- (1) The Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages, and the like, as determined under the provisions of the said Act;
- (2) A Tribunal shall be constituted under section 14 of the said Act, for the purpose of determining the amounts payable to the Central Government by the Government Company under conditions (1) and all expenditure incurred in connection with any such tribunal and persons appointed to Assist the Tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the rights, in the said land, so vested, shall also be borne by the Government Company;
- (3) The Government Company shall indemnify the Central Government its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the aforesaid rights in the said land so vested;
- (4) The Government Company shall have no power to transfer the aforesaid rights in the said lands so vested, to any other person without the prior approval of the Central Government; and
- (5) The Government Company shall abide by such directions and conditions as may be given or imposed by the Central Government for particular areas of the said land as and when necessary.

[F. No. 43015/9/2015-PRIW-I]

SUJEET KUMAR, Under Secy.

नई दिल्ली, 8 सितम्बर, 2016

**का.आ. 1875.**—केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957(1957 का 20) की धारा 4 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार के कोयला मंत्रालय की अधिसूचना संख्या का.आ. 591(अ), तारीख 22 फरवरी, 2016, जो भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खंड (ii), तारीख 25 फरवरी, 2016 में प्रकाशित की गई थी, में निम्नलिखित संशोधन करती है, अर्थात् :-

उक्त अधिसूचना में, अनुसूची के स्थान पर निम्नलिखित अनुसूची रखी जाएगी, अर्थात् :-

“अनुसूची

मगध विस्तार परियोजना

जिला- लातेहार, झारखण्ड

( रेखांक संख्यांक आरईवी/10/2016, तारीख 26 जुलाई, 2016)

सभी अधिकार:

क्रम सं.	ग्राम	थाना	थाना संख्या	जिला	क्षेत्र (एकड़ में )	क्षेत्र (हेक्टेयर में )	टिप्पणियां
1.	चटर	बालूमाथ	59	लातेहार	37.06	15.00	भाग
2.	सेरेगढ़ा	बालूमाथ	60	लातेहार	79.07	32.00	भाग
3.	बुकूरू	बालूमाथ	64	लातेहार	7.41	3.00	भाग
4.	चर्रा	बालूमाथ	54	लातेहार	3.81	1.54	भाग
कुल:					127.35	51.54	
कुल क्षेत्र : 127.35 एकड़(लगभग) या 51.54 हेक्टेयर(लगभग)							

मगध विस्तार परियोजना का सीमा-वर्णन:

- क-ख-ग-घ - रेखा, बिन्दु 'क' से आरंभ होती है और ग्राम बुकूरू, सेरेगढ़ा, चटर से होते हुए बिन्दु 'घ' पर मिलती है।
- घ-ङ.-च-क - रेखा, ग्राम चटर, चर्रा, सेरेगढ़ा, बुकूरू से गुजरते हुए जाती है और आरंभिक बिन्दु 'क' पर मिलती है। ”

[फा.सं. 43015/2/2016-पीआरआईडब्ल्यू-1]

सुजीत कुमार, अवर सचिव

**टिप्पण.-** मूल अधिसूचना संख्यांक का.आ. 591(अ), तारीख 22 फरवरी, 2016 जो भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खंड (ii), तारीख 25 फरवरी, 2016 में प्रकाशित की गई थी ।

New Delhi, the 8th September, 2016

**S.O. 1875.**—In exercise of the powers conferred by sub section (1) of section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957(20 of 1957), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Coal, number S.O 591(E), dated the 22<sup>nd</sup> February, 2016 published in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 25<sup>th</sup> February, 2016, namely:-



2. In the said notification, for the Schedule, the following Schedule shall be substituted, namely:-

“Schedule

Magadh Expansion Project

District-Latehar, Jharkhand

( Plan bearing number REV/10 /2016, dated the 26<sup>th</sup> July, 2016)

All Rights:

Sl. No.	Village	Thana	Thana number	District	Area( in acres)	Area in (hectares)	Remarks
1.	Chetar	Balumath	59	Latehar	37.06	15.00	Part
2.	Seregara	Balumath	60	Latehar	79.07	32.00	Part
3.	Bukru	Balumath	64	Latehar	7.41	3.00	Part
4.	Charra	Balumath	54	Latehar	3.81	1.54	Part
Total:					127.35	51.54	
Total area : 127.35 acres(approximately) or 51.54 hectares (approximately)							

Boundary Description of Magadh Expansion Project:

A-B-C-D - Line Starts from point ‘A’ and passes through village Bukru, Seregara, Chetar and meets at point ‘D’.

D-E-F-A - Line passes through village chetar,Charra, Seregara, Bukru and meets at starting point ‘A’.

[F. No. 43015/2/2016-PRIW-I]

SUJEET KUMAR, Under Secy.

**Note.-** The principal notification S.O. 591(E), dated the 22nd February, 2016 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 25th February, 2016.

**आदेश**

नई दिल्ली, 8 सितम्बर, 2016

**का.आ.1876.**—कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 9 की उपधारा (1) के अधीन जारी भारत के राजपत्र, असाधारण, भाग II, खंड 3, उप-खंड (ii), तारीख 21 मार्च, 2016 में प्रकाशित भारत सरकार के कोयला मंत्रालय की अधिसूचना का. आ. संख्यांक 1170(अ), तारीख 18 मार्च, 2016 के प्रकाशन पर उक्त अधिसूचना से संलग्न अनुसूची में वर्णित भूमि और ऐसी भूमि, (जिसे इसमें इसके पश्चात् उक्त भूमि कहा गया है), में के सभी अधिकार, उक्त अधिनियम की धारा 10 की उपधारा (1) के अधीन, सभी विल्लंगमों से मुक्त होकर, आत्यंतिक रूप में केन्द्रीय सरकार में निहित हो गए थे ;

और, केन्द्रीय सरकार का यह समाधान हो गया है, कि वेस्टर्न कोलफील्ड्स लिमिटेड, नागपुर (जिसे इसमें इसके पश्चात् सरकारी कंपनी कहा गया है), ऐसे निबंधनों और शर्तों का, जो केन्द्रीय सरकार इस निमित्त अधिरोपित करना उचित समझे, अनुपालन करने के लिए रजामंद है।

अतः अब, केन्द्रीय सरकार, कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 की धारा 11 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, यह निदेश देती है कि इस प्रकार उक्त भूमि में या उस पर के खनन अधिकार तारीख 21 मार्च, 2016 से निम्नलिखित निबंधनों और शर्तों के अधीन रहते हुए, सरकारी कंपनी में निहित हो जाएंगे, अर्थात् :-

1. सरकारी कंपनी, उक्त अधिनियम के उपबंधों के अधीन यथा अवधारित प्रतिकर, व्याज, नुकसानियों और वैसी ही मदों की बाबतु किए गए संदायों की केन्द्रीय सरकार को प्रतिपूर्ति करेगी;
2. शर्त (1) के अधीन सरकारी कम्पनी द्वारा केन्द्रीय सरकार को संदेय रकमों का अवधारण करने के प्रयोजनों के लिए उक्त अधिनियम की धारा 14 के अधीन एक अधिकरण का गठन किया जाएगा और किसी ऐसे अधिकरण और अधिकरण की सहायता के लिए नियुक्त व्यक्तियों के संबंध में उपगत सभी व्यय, सरकारी कंपनी द्वारा वहन किए जाएंगे और इस प्रकार निहित उक्त भूमि में या उस पर के खनन अधिकारों के लिए या उनके संबंध में अपीलों आदि जैसी सभी विधिक कार्यवाहियों की बाबतु उपगत, सभी व्यय भी, सरकारी कंपनी द्वारा वहन किए जाएंगे।
3. सरकारी कंपनी, केन्द्रीय सरकार या उसके पदधारियों की, ऐसे किसी अन्य व्यय के संबंध में क्षतिपूर्ति करेगी, जो इस प्रकार निहित उक्त भूमि में या उस पर के अधिकारों के बारे में, केन्द्रीय सरकार या उसके पदधारियों द्वारा या उनके विरुद्ध किन्हीं कार्यवाहियों के संबंध में आवश्यक हो।
4. सरकारी कंपनी को केन्द्रीय सरकार के पूर्व अनुमोदन के बिना उक्त भूमि और भूमि में या उसके उपर इस प्रकार निहित अधिकारों को किसी अन्य व्यक्ति को अंतरित करने की शक्ति नहीं होगी ; और
5. सरकारी कंपनी, ऐसे निदेशों और शर्तों का पालन करेगी, जो केन्द्रीय सरकार द्वारा, जब कभी आवश्यक हो, उक्त भूमि के खनन अधिकार के विशिष्ट क्षेत्रों के लिए दिए जाएं या अधिरोपित किए जाएं।

[फा.सं. 43015/15/2015 –पीआरआईडब्ल्यू-1]

सुजीत कुमार, अवर सचिव

### ORDER

New Delhi, the 8th September, 2016

**S.O. 1876.**—Whereas by the notification of the Government of India in the Ministry of Coal, number S. O. 1170(E), dated the 18th March, 2016, published in the Gazette of India Extraordinary, Part II, Section 3, Sub-section (ii), dated the 21st March, 2016, issued under sub-section (1) of section 9 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act), the mining rights in or over the land described in the Schedule appended to the said notification (hereinafter referred to as the said land) vested absolutely in the Central Government free from all encumbrances under sub-section (1) of section 10 of the said Act ;

And whereas, the Central Government is satisfied that the Western Coalfields Limited, Nagpur (hereinafter referred to as the Government Company) is willing to comply with such terms and conditions as the Central Government thinks fit to impose in this behalf ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 11 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Central Government hereby directs that the mining rights in or over the said land so vested shall with effect from the 21<sup>st</sup> March, 2016, shall vest in the Government Company, subject to the following terms and conditions, namely :-

1. The Government Company shall reimburse to the Central Government all payments made in respect of compensation, interest, damages and the like, as determined under the provisions of the said Act;
2. A Tribunal shall be constituted under section 14 of the said Act for the purpose of determining the amounts payable to the Central Government, by the Government Company under conditions (1) and all expenditure incurred in connection with any such Tribunal and persons appointed to assist the Tribunal shall be borne by the Government Company and similarly, all expenditure incurred in respect of all legal proceedings like appeals, etc. for or in connection with the mining rights, in or over the said lands, so vesting, shall also be borne by the Government Company;
3. The Government Company shall indemnify the Central Government or its officials against any other expenditure that may be necessary in connection with any proceedings by or against the Central Government or its officials regarding the rights in or over the said land so vested;
4. The Government Company shall have no power to transfer the lands to any other persons without the prior approval of the Central Government ; and

5. The Government Company shall abide by such direction and conditions as may be given or imposed by the Central Government for mining rights of particular areas of the said lands, as and when necessary.

[F. No. 43015/15/2015-PRIW-I]

SUJEET KUMAR, Under Secy.

### श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 31 अगस्त, 2016

**का.आ. 1877.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स डालमिया मैग्नेसाइट कार्पोरेशन के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 83, 85/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-43011/37/2012-आईआर (एम),

सं. एल-43011/36/2012-आईआर (एम)]

समीर कुमार दास, अवर सचिव

### MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 31st August, 2016

**S.O. 1877.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83, 85/2012) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Dalmia Magnesite Corporation and their workman, which was received by the Central Government on 29.08.2016.

[No. L-43011/37/2012-IR (M),

No. L-43011/36/2012-IR (M)]

SAMIR KUMAR DAS, Under Secy.

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT, CHENNAI

Thursday, the 30<sup>th</sup> June, 2016

**Present :** K.P. PRASANNA KUMARI, Presiding Officer

### Industrial Dispute No. 83 & 85 of 2012

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Dalmia Magnesite Corporation and their workman)

### BETWEEN :

### ID 83/2012

The General Secretary  
Magnesite National Labour Union  
Vazhapadi K. Ramamoorthy Illam  
52, Dr. Subbarayan Road  
Salem-626001

: 1<sup>st</sup> Party/Petitioner Union

AND

The General Manager : 2<sup>nd</sup> Party/Respondent  
Dalmia Magnesite Corporation  
Karupur Post  
Salem-636012

**ID 85 of 2012**

**BETWEEN :**

The General Secretary : 1<sup>st</sup> Party/Petitioner Union  
Magnesite Desiya Thozhilalar Sangam  
52, Dr. Subbarayan Road  
Salem-636001

**AND**

The General Manager : 2<sup>nd</sup> Party/Respondent  
Dalmia Magnesite Corporation  
Karupur-Post,  
Salem-636012

S. No.	I.D. No.	Reference No. & Date	Name of the I Party S/Sri	Name of the II Party	Appearance for Workman	Appearance for Respondent
1.	83/2012	L-43011/37/2012-IR (M) dated 09.11.2012	The General Secretary, Magnesite National Labour Union, Vazhapadi K. Ramamurthy Illam, 52, Dr. Subbarayan Road, Salem-636001	The General Manager, Dalmia Magnesite Corporation, Karupur Post, Salem-636012	M/s K.M. Ramesh	Sri T. Poornam
2.	85/2012	L-43011/36/2012-IR (M) dated 09.11.2012	The General Secretary, Magnesite Desiya Thozhilalar Sangam, 52, Subbarayan Road Salem-636001	The General Manager, Dalmia Magnesite Corporation, Karupur Post, Salem-636012	M/s K.M. Ramesh	Sri T. Poornam

**COMMON AWARD**

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 83/2012 and 85/2012 respectively. In both IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

2. The schedule mentioned in the orders of reference in the above IDs are as under:

**ID 83/2012**

*“Whether the action of the management of M/s Dalmia Magnesite Corporation, Salem, in not arriving at a wage settlement with the representatives of the Trade Union is legal and justified? If not to what relief the Union and its members are entitled to?”*

**ID 85/2012**

*“Whether the action of the management of M/s Dalmia Magnesite Corporation, Salem regarding deduction of a 8 days wages and non-payment of one day’s salary without following the provisions and conducting proper enquiry is legal and justified? If not to what relief the workmen are entitled?”*

**COMMON AWARD**

The Central Government, Ministry of Labour & Employment referred the IDs mentioned above to the Industrial Tribunal, Chennai for adjudication. The IDs were numbered as ID 83/2012 and 85/2012 respectively. In both IDs the parties have entered appearance through the counsel and filed claim and counter statement respectively.

3. The schedule mentioned in the orders of reference in the above IDs are as under:

4. The averments in the Common Claim Statement filed by the petitioner in the above IDs are as below:

The petitioner is a registered union. 105 workmen out of the 312 workmen of the Respondent Corporation are members of the Petitioner Union. The settlement dated 14.02.2007 which was binding on the petitioner and the Respondent expired on 31.12.2009. Negotiations were started between the Unions and the Respondent. Consequently, a settlement was entered into on 16.10.2010 as an interim measure by paying Rs. 15,000/- to all the employees as advance before Pongal of 2011. The Management agreed to settle wage charter within a month. However, the Management did not adhere with the settlement of 16.10.2010. On repeated request the Management agreed to pay certain amount as wages. Another settlement was entered into on 11.01.2012 by which the Management agreed to finalize the Charter of Demands by 31.03.2012. Since the Management did not finalize the Charter of Demands, some of the representatives of the Union suddenly went to talk to the Officers of the Respondent on 04.04.2012 so as to finalize the issues. Since permission was not granted to them to meet the Officers the employees waited at the gate. The Union leaders reached the place in the evening of the day. The Management charged the employees that they have gheraoed the Officers on 04.04.2012. They issued notice on 05.04.2012 asking the employees to submit their explanation. They did not give any explanation as they were under the impression that the Management has issued the notice to avoid prosecution under Section-29 of the ID Act. There was no gherao or strike on 04.04.2012 as alleged by the Management. The Management issued circular on 02.05.2012 stating that 8 days wage would be deducted from all the employees except those who have not attended the work on 04.04.2012 and women employees. Before taking such a decision the Management has not issued charge sheet or conducted any enquiry. The employees approached the High Court of Madras by Writ Petition and obtained stay of the order of the Management to cut wages for 8 days. In the meanwhile conciliation proceedings have been going on. It ended in failure and the Government has referred the dispute for adjudication by the Tribunal. There is no basis for the refusal of the Management in not increasing the wages. An order may be passed holding that the action of the Management ordering 8 days wage cut and non-payment of one day wage is illegal and also directing the Management to allow the demands of the Union dated 02.08.2010 w.e.f. the date of expiry of the last settlement.

5. The petitioner has filed additional Claim Statement contending as below:

The Respondent Corporation is engaged in Magnesite mining. There are two other establishments by name Burn Standard Company owned by the Central Government and Tamil Nadu Magnesite Ltd. owned by Tamil Nadu Government engaged in mining in Salem District. These companies are exporting Magnesite to different countries and are earning enormous profits. About 10,000 workers including permanent, temporary and contract workers are working in all the three companies together. Upto 1990 all the three companies mentioned above were entering into wage settlements in common. Pay-scales were common and identical for all the three companies. On 14.05.1995 the Respondent entered into a separate wage settlement. However, the terms of the settlement were more or less the same as that of the common wage settlement arrived at by the other two companies. In 1998 also, though separate settlements were entered into by these companies, the terms of the settlement regarding pay-scales were one and the same. In 2007 the Respondent has entered into a wage settlement which was to be in force till December, 2009. This last settlement entered into by the Respondent expired on 31.12.2009. The Trade Unions issued notices terminating the settlement. Initially the petitioner submitted a Charter of Demands. Later another Common Charter of Demands was submitted by the three Trade Unions. After several negotiations and strike notice the Respondent entered into a settlement on 16.10.2010 with the three Unions and agreed to pay Rs. 15,000/- as interim relief to the workmen. As per the settlement the Management was to conclude the wage settlement within a month. During subsequent talks the Management offered wage increase of Rs. 2,283/-. However, wage settlement could not be entered into because of the negative attitude of the Management. Another interim settlement was entered into on 11.01.2012 agreeing to pay Rs. 13,000/- as interim relief and also agreeing to arrive at a final settlement before 31.03.2012. Since the Management did not finalize the settlement the entire workmen assembled before the General Manager's room to enquire about the wage settlement on 04.04.2012. They did not resort to any strike. But the Management decided to cut the wages of 8 days from the employees. Since the Management was not willing to arrive at an amicable settlement the petitioner pursued the Industrial Dispute already pending before the Assistant Labour Commissioner (Central). On failure of talks, the Government has referred the dispute to this Tribunal. Though The Unions had raised 39 demands in the initial Charter of Demands the petitioner has now restricted its demands and is pressing only 15 demands which are given in the Claim Statement. When this dispute is pending before this Tribunal the Respondent secretly arrived at a wage

settlement under Section-18(1) of the ID Act with Magnesite Workers Progressive Union on 08.01.2013. The Respondent did not call the Petitioner Union or the Union affiliated to CITU for talks before arriving at such a settlement. Apart from that the Respondent had forced the workmen who are members of the Petitioner Union to sign letters prepared by them agreeing to receive the benefits of the settlement. In view of pressure and force the workmen who are members of the Petitioner Union had signed as dictated by the Management. The Petitioner Union protested against this by letter dated 18.02.2013. The members of the Union have not accepted the settlement dated 08.01.2013 on their free volition. Their signatures were obtained under threat, coercion and intimidation. The petitioner has not lost its representative character only because its members have accepted the benefits of the settlement dated 08.01.2013. The Respondent is running in profit and is having sufficient funds to meet the demands of the Petitioner Union. The Petitioner is entitled to the reliefs claimed in the earlier Claim Statement.

6. The Respondent has filed Counter Statement contending as below:

The remedy of the workmen regarding deduction of 8 days wages and non-payment of one day salary is to be adjudicated under the Payment of Wages Act. This Tribunal has no jurisdiction to consider the matter in the light of Sections 15 to 17 of the Payment of Wages Act. Regarding Wage Settlement, the same has been settled under Section-18(1) of the Industrial Disputes Act with one majority union viz. Magnesite Workers Progressive Union. 288 workers coming to 92% of the workers have received the increase in wage and allowance for the years 2010, 2011 and 2012. Since majority of workers have accepted the offer the dispute is over and the claim is to be dismissed. The Respondent is operating their mines in 1110 acres of land in Chettichavadi Village. The factory of the respondent is situated at Vellakkalpatti Village. The factory and mines are located at different places and the distance in between is from 1.5 to 5 kilometres. The Magnesite and Dunite Ore quarried in the mines will be processed in the factory and the products are manufactured. The workmen were working in general shift in the factory and general shift in the mines and in three shifts in the mines and factory also. The workmen are members of three recognized unions by name Magnesite Workers Progressive Union, Magnesite National Labour Union i.e. the Petitioner Union and Salem District Magnesite Labour Union. About 45% of the workers are members of the Magnesite Workers Progressive Union and about 35% are members of the Petitioner Union. As per the settlement dated 16.10.2010 the Respondent had agreed to pay Rs. 15,000/- to all permanent workmen on or before 13.01.2011. The final settlement was to be concluded within one month from the date of payment of interim relief. The Unions have agreed that the workmen will increase productivity in the mines before the wage settlement is finalized. However, the workmen in the Mines willfully reduced production in spite of notice by the Respondent on several occasions. Consequently, productivity never increased and the settlement could not be finalized. The Respondent had complied with all its obligations under the settlement dated 16.10.2010. Thereafter another settlement was entered into on 11.01.2012 under Section-18(1) of the ID Act. The Respondent had paid Rs. 13,000/- to the workmen as agreed to by the settlement. However, because of inter-union rivalry and exorbitant demand of the workmen a final settlement could not be arrived at. On 04.04.2012 the mine workers submitted their attendance cards and suddenly indulged in strike without any notice. They sat in front of the factory gate and indulged in gherao. They prevented ingress and egress of the vehicles of the Respondent and also vehicles of the employees. The staff members and Officers could not go out even after office hours, as a result of the strike. They had to remain in the factory for about two hours. They were permitted to leave the factory only by 0700 PM. The Assistant Labour Commissioner, Chennai was informed of the gherao on the same day. The Respondent proposed to deduct 8 days wages from the workmen who struck work. It was not the first time the workmen resorted to strike without notice.

7. In the additional Counter Statement filed in answer to the additional Claim statement, the Respondent has contended as below:

Common Wage Settlement including the other two companies of Salem District was arrived at only for the period from 01.04.1980 to 30.11.1993. Prior to this or after this there has been no common wage settlement. The alleged dispute has already been settled under Section-18(1) of the Industrial Disputes Act. Due to the fact that 102 members out of 105 members of the Petitioner Union have accepted and enjoyed the benefits of the settlement, the petitioner has no representative capacity to pursue the case. The case in the Claim Statement that the Respondent is getting large profit is not correct. The two companies referred to by the Petitioner in the Claim Statement are Government Companies and cannot be compared with the Respondent Company. The products and markets of the three companies are not the same. The petitioner is not entitled to any relief. The claims are liable to be dismissed.

8. The parties to both disputes being the same and common claim and counter statements having been filed the two IDs were tried jointly. Evidence was recorded in ID 83 of 2012.

9. The evidence consists of oral evidence of WW1 to WW15 and MW1 to MW5 and documents marked as Ext.W1 to Ext.W63 and Ext.M1 to Ext.M53.

**10. The points for consideration are:**

- (i) Whether the petitioner has lost its representative character and is not entitled to pursue the dispute in view of the subsequent settlement entered into?
- (ii) Whether the dispute regarding wage cut is not maintainable before this Tribunal?
- (iii) Whether the workmen are entitled to any wage increase as claimed by the petitioner? If so, to what extent?
- (iv) Whether the Respondent is justified in cutting the wages of the workmen?

**Point No. 1**

11. The wage settlement that was entered into by the Respondent with Unions including the Petitioner Union had expired on 31.12.2009. The Unions had submitted a Common Charter of Demands to the Respondent. During the negotiations, an interim settlement was entered into on 16.10.2010 with the three Unions, by which the Respondent had agreed to pay some interim relief to the workmen. Though it was also agreed that the final settlement would be entered into within a month, this had not materialized. Subsequently, another settlement was entered into on 11.01.2012, again providing for some interim payment and also agreeing to finalize the settlement by 31.03.2012. Still a wage settlement had not materialized and the Unions had pursued the dispute raised by them before the Assistant Labour Commissioner (Central), Chennai. Consequent to the failure of the conciliation efforts, a failure report was submitted to the Government and the Government has referred the matter to this Tribunal. While the matter is pending before this Tribunal the Respondent had entered into a settlement with one of the Unions viz. Magnesite Labour Progressive Union on 08.01.2013. Subsequently, the Respondent had also executed agreements with most of the members of the Petitioner Union by which they agreed to receive the benefits as per the settlement. One contention that has been advanced on behalf of the Respondent is that the petitioner has no *locus-standi* to proceed with the disputes in view of the fact that the majority union has entered into a settlement and this settlement has been accepted by almost all members of the Petitioner Union and therefore it has lost its representative character and is not entitled to represent the members on whose behalf the disputes are raised.

12. The contention raised by the Respondent is resisted by the Petitioner. According to the Petitioner, the subsequent withdrawal of support by the members of the Union or execution of a settlement by some other Union will not take away its representative capacity. Its capacity is to be decided as on the date of reference and not on the basis of subsequent events.

13. The counsel for the petitioner has referred to certain judicial pronouncements in his attempt to justify his argument that the Union is still competent to proceed with the disputes. Reference was made to the decision of the Madras High Court in *WORKING JOURNALS OF HINDU MADRAS VS. MANAGEMENT OF HINDU MADRAS AND ANOTHER* reported in AIR 1961 MADRAS 370. The Madras High Court held in this that the jurisdiction of the Labour Court to proceed with the matter wholly depended on whether the Industrial Dispute referred to it for adjudication existed or was apprehended on the date of reference and not on any subsequent date. In the decision in *BOMBAY UNION OF JOURNALISTS AND OTHERS VS. THE HINDU BOMBAY AND ANOTHER* reported in AIR 1963 SC 318, the Apex Court has held that subsequent withdrawal of support will not take away the jurisdiction of an industrial tribunal. The principle was reiterated by the Apex Court in the decision in *M/s WESTERN INDIA WATCH CO. LTD. VS. WESTERN INDIA WATCH CO. WORKERS UNION* reported in AIR 1970 SC 1205. Here it was held that the validity of reference of an Industrial Dispute is to be judged on the facts as on the date of reference. So it is clear that the validity of the dispute is to be decided as on the date of reference. The fact that one of the Unions had entered into a settlement subsequently with the Management will not affect the validity of the dispute and the Tribunal continues to have jurisdiction to deal with the matter.

14. There is also a contention for the Respondent that the members of the Petitioner Union themselves have accepted the settlement and received the benefits of the settlement and therefore the Petitioner has lost its representative capacity and is not entitled to pursue the dispute. The case of the petitioner is that its members did not accept the settlement on their own volition but they were forced to accept it by threat, coercion, intimidation, etc. Whether the members were forced to accept the settlement is a question yet to be decided. Even without going into that aspect the contention can be dealt with. The Apex Court has held in *M/s TATA CHEMICALS LTD. VS. WORKMEN EMPLOYED UNDER M/S TATA CHEMICALS LTD.* reported in AIR 1978 SC 828 that acceptance of the benefits flowing from the agreement even by the workmen who were not signatories to the settlement is of no avail and cannot operate as estoppel against the Union or its members. Of course it is pointed out by the counsel for the Respondent that in the above case the workmen are not parties to the settlement, but only accepted the benefits of the agreement. In the present case the majority have signed individual agreements with the Respondent. However, they have informed by Ext.M42 that they are servicing the benefits under protest. In any case the dispute is to be decided as on the date of reference. So, even if the members of the Union had signed the settlement it is not of any consequence and the validity of the dispute is not affected. The point is answered in favour of the petitioner.

**Point No. 2**

16. The schedule of reference in ID 85/2012 is regarding the action of the Respondent in deducting 8 days wages and non-payment of 1 day salary without following the provisions and without conducting proper enquiry.

17. The case of the Respondent is that on 04.04.2012 the workmen of the General Shift and First Shift suddenly struck work and gathered in front of the factory premises from morning till evening, indulged in gherao and prevented movement of the staff and vehicles from and to the factory premises. They issued notice to the concerned workmen, displaying notice in the notice board asking to show cause why wages of 8 days of the workers of the General Shift and the First Shift who had absented themselves after submitting their attendance cards on 04.04.2012 shall not be deducted. Then still another notice was displayed. The final decision to deduct the wages also was displayed. The dispute in ID 85/2012 is regarding this deduction of wages by the Respondent.

18. The Respondent has contended in the Counter Statement that the petitioner is not entitled to raise this dispute before this Tribunal. According to the Respondent, this Tribunal is not having jurisdiction to decide the matter in view of the provisions contained in Sections 15 to 17 of the Payment of Wages Act. The Payment of Wages Act is regarding payment of wages to persons including those employed in factories. Sections 15 to 17 state how matters coming under the Payment of Wages Act are to be dealt with. However, the contention raised by the Respondent could not be accepted in view of Sub-Section-6 of Section-1 of the Act. The Sub-Section states that the Act will apply to wages payable to an employed person in respect of a wage period if such wages for that wage period do not exceed Rs. 6,500/- per month or such other higher sum, which on the basis of the figures of consumer expenditure survey published by National Sample Survey Organization, the Central Government may after every 5 years by notification in the official gazette specify. By subsequent notifications the amount has been enhanced periodically. It is pointed out by the counsel for the petitioner that the last enhancement was in the year 2010 and this was to an amount of Rs. 10,000/- . By the time the dispute was raised, all the workmen involved in the dispute were drawing wages higher to the ceiling fixed as per Section-1(2) of Payment of Wages Act. So Payment of Wages Act is not applicable to the issue in question. Industrial Disputes Act which is the general enactment to deal with the disputes in between workmen and the employer will be applicable to the dispute. The dispute is to be decided under the provisions of Industrial Disputes Act only. So this Tribunal has got jurisdiction to decide the issue. The point is found in favour of the petitioner.

**Point No. 4**

19. Having found that this Tribunal has got jurisdiction to decide the issue the question now to be considered is whether the Respondent had acted rightly in cutting 8 days wages of the concerned workmen.

20. According to the Respondent on 04.04.2012 the Mine Workers who came to work in the morning after submitting their respective attendance cards to the Attendance Clerk, suddenly indulged in strike without any notice. So also the factory workers, after submitting their Attendance Cards left the workplace without permission and indulged in strike without any prior notice. The workers sat in front of the factory gate inside the factory premises and indulged in gherao. The Mine Workers who had arrived at the factory gate by then also squatted in front of the gate. They prevented ingress and egress of the vehicles as well as that of the employees. The staff members and Officers of the Respondent could not go out even after office hours at 0500 PM and had to remain inside the factory for almost 2 hours. It was only by about 0700 PM the staff and Officers were permitted to leave the factory. Because of this action of the workers the Respondent had to request the local Police to avoid law and order problem. They had come to the spot by about 1130 AM on the day.

21. MW1, the Dy. General Manager, MW2 the Superintendent of Mines, MW3, the Assistant General Manager (Engineering), MW4, the Manager (Maintenance) and also MW5, the Deputy General Manager (accounts) have deposed about the incident of strike and gherao that had allegedly occurred on 04.04.2012. All these witnesses have reiterated the case in the Counter Statement regarding the incident. It is further stated that it was not the first time the workers were indulging in strike without notice and gherao and the Management was fully justified in cutting the wages of the workmen involved for 8 days in accordance with the Standing Orders and under the Payment of Wages Act.

22. What is the evidence given on the side of the petitioner regarding the incident? WW1 who is the Joint Secretary of the Petitioner Union has stated in his Proof Affidavit that the Management has construed the assembly of the workmen before the General Manager's room as strike and issued notice dated 05.04.2012 as to why 8 days wages should not be cut from the salary payable to the workers for the month of April 2012. He has further stated that what happened on 04.04.2012 is that some of the representatives of the Unions have been to the Office of the Respondent to meet the General Manager to enquire about the fate of the Charter of Demands that was already submitted. But the General Manager had refused to meet the representatives of the workmen. As seen from the Affidavit there was no gherao or any form of agitation on 04.04.2012. The workmen had spontaneously gone to the office to meet the General Manager as there was no decision on the Charter of Demands for more than a year. The case in the Claim Statement



also is to this effect. However, as seen from the Claim Statement not only the representatives of the Union but also the employees went to talk to the Officers. During his cross-examination, WW1 has stated that they had requested the Mine Superintendent to meet the General Manager but permission was not granted in writing but only orally. He does not know at what time the Mine Workers went to the factory to meet the General Manager. However, he admitted during cross-examination that none of them returned for work on that date. All of them remained in the factory itself. He also admitted that the Police personnel came to the factory on the said date. He then stated that since they were not granted permission to meet the General Manager, they had waited outside. He admitted during the later stage of cross-examination that all the workmen who came to work on 04.04.2012 were present outside the factory gate throughout the day. Thus it is clear even from the evidence of WW1 that after the workers of the mines as well as the factory gathered at the premises of the factory, they did not go back for their work.

22. WW11 is the General Secretary of the Union. This witness also has stated that the workmen did not resort to any work much less lightening strike on 04.04.2012. According to him, workmen and some of the representative of the Union went to the Office of the Respondent to meet the General Manager. However, the General Manager refused to meet them. The leaders of the unions came to the spot only in the evening of 04.04.2012. He did not state in his Proof Affidavit at which time the workers had gone to meet the General Manager. However, he has stated during his cross-examination that the workmen from the Mines and Factories had informed him on 04.04.2012 by 1000 AM itself that they are going to meet the General Manager. He further stated that all the workmen from the Mines and the Factory had gone to visit the Manager. He also stated that the Police had reached the place in the morning itself. He further stated that himself and other Union Leaders had met the General Manager by 0330 PM and had discussion with him for 2 hours and it was only thereafter they came and spoke to the workmen and they had dispersed by about 0600 PM. Thus it is clear from the evidence of this witness that the workers had left their work spot in the morning itself and had gathered in front of the factory premises and did not go back for work on the day.

23. The petitioner had examined several witnesses in their attempt to establish that the Management had entered into a settlement individually with the workers using force, undue influence, etc. However, none of these witnesses were made to state anything about what has occurred on 04.04.2012.

24. Apart from the evidence of WW1 and WW11 documents produced on the side of the Respondent also would show that the concerned workmen had left their place of work on 04.04.2012. It is not necessary to consider the question whether there was a strike or gherao on the part of the workmen. The Management has decided to deduct wages of the workmen on the ground that they have absented from work after submitting attendance and this was done in concert by them. So whether there was absence from work in concert alone need be considered. The documents produced would justify such a conclusion.

25. Ext.M11 is a notice issued by the Management on 05.04.2012 to all the workers stating that on 04.04.2012 they had indulged in sudden strike without any notice from 0900 AM. The Respondent, by the notice, has proposed to deduct 8 days wages of the workers from the wages of April, 2012 as per the Certified Standing Orders and Payment of Wages Act. The workers were asked to show cause before 09.04.2012 why the proposed deduction should not be made. Ext.M12 is the reply given to Ext.M11 by Labour Progressive Front, another Union. What is stated in this is that the Management had not held any talks regarding the demands made by the workers and due to the mental agony the workers had come to the factory to see the Assistant General Manager in person. It is further stated that even though the workers who had assembled asked the Manager directly, there was no decision on wage increase. In Ext.M12, there is no denial of the case in Ext.M11 that the workers had left their work spot at 10.00 AM and started to sit at the factory gate in the morning itself. Ext.M13 is the notice issued in continuation of Ext.M11. It states that no reply was received to Ext.M11 notice from the workers before 09.04.2012, which was the stipulated date and Ext.M12 was received after the date. The notice states that the Respondent has construed that there was no explanation to offer by the concerned workers and the Management has decided to deduct the wages. In Ext.M14 dated 30.04.2012 the Management has given the names of persons whose wages for 8 days were to be deducted. Ext.M15 is the reply given by the Petitioner Union to the Management regarding the incident. What is stated in this is that since the Management did not call them for talks, when workers came for job on 04.04.2012, they suddenly came to the General Manager after informing the Mining Officers and the Factory Officers, but, they were not permitted to meet the General Manager and so the workers remained at the gate and talks were held only after the Union Leaders came on that day evening. Thus, Ext.M15, which is given after 26 days of the incident also shows that there is no denial of the case of the Management that the workers left the work place in the morning itself and remained at the factory premises until the evening. Thus, there is no doubt that the workers of the First Shift and the General Shift did not work on that day.

25. The very fact that the workers of the Mines as well as the factory had gathered at the factory premises would show that it was a concerted action on their part. It has come out in evidence that the Mines and the Factory are situated at different places. The Mine workers will be working elsewhere in the Mines and the factory workers will be in the factory. If they had come together, necessarily it should be an act of concert. Even otherwise the evidence is indicative

of the fact that they had a previous discussion in the absence of which all of them would not have reached the factory premises together which reveals a concert on their part.

26. Section-7 of the Payment of Wages Act refers to matters for which deductions can be made from the wages. Sub-Section 2(b) provides that deduction for absence from duty from the wages of an employed person shall be made only in accordance with the provisions of the Act. According to the Management deduction was proposed as per the Standing Orders and the Payment of Wages Act. The relevant clause of the Standing Orders as quoted in the written argument of the Respondent is that if two or more persons acting in concert and without giving a fortnight's notice to the Management absent themselves from work or being present in the work spot refused to work without reasonable cause deduction of 8 days wages as defined under the Payment of Wages Act shall be made from the wages of the workmen. This clause in the /standing orders is drawn from the proviso to Section-9(2) of the Payment of Wages Act, but with some slight difference. As per the proviso if 10 or more employed persons acting in concert absent themselves without due notice (that is to say without giving the notice which is required under the terms of their contract of employment) and without reasonable cause, deduction of wages from any such person may include such amount not exceeding his wages for 8 days as may by any such terms be due to the employer in lieu of due notice. The explanation to the proviso states that an employed person shall be deemed to be absent from the place where he is required to work, if although present in such place he refuses in pursuance of a stay-in-strike or for any other cause which is not reasonable in the circumstances to carry out his work. Thus, in the Act what is stated is that deduction of wage can be for a period upto 8 days. It does not insist that there should be a deduction of 8 days itself.

27. No doubt, the workers were aggrieved and were anxious on account of absence of a final settlement regarding the Charter of Demands that was submitted by them to the Management. However, it was no reason for all the workers, all from the General Shift as well as from the First Shift, in the factory as well as in the Mines to leave the work spot and give up work for the entire day. This is certainly acting in concert. They are to be deemed to have been absent from their place of work even though they were present at the factory premises.

28. The Management has decided to cut 8 days wages from the concerned workers. No doubt, they need not be paid for the day as they did not work for the day. As per the Act, there is discretion for the Management to cut wages for 8 days. However, when the particular circumstances are taken into account, when the fact that the workers were very much aggrieved because a final settlement regarding the wage revision has not come into effect even after three years of the expiry of the wage settlement, the Management should not have been so stringent in invoking the provisions of the Payment of Wages Act and the relevant clause of the Standing Orders. In the particular situation I find that cut of wages for 2 days will be sufficient. The point is found accordingly.

### **Point No. 3**

29. The main demand of the petitioner is revision of the wages. The last wage settlement between the respondent and the Unions had expired by the end of 2009. Consequently all the Unions including the Petitioner Union submitted a common Charter of Demands for revision of wages and also for other benefits. Since the Respondent has failed to enter into a settlement regarding wage revision the petitioner has pursued the dispute. In the claim statement the petitioner has restricted its demands to 15.

30. Before considering the question whether the petitioner is entitled to the relief of wage revision as claimed, it is necessary to go into the past history of the establishment regarding the manner in which wage settlements were entered into. In Salem area there seems to be several industries related to mining of magnesite. Apart from the Respondent establishment Burn Standard Company owned by the Central Government and Tamil Nadu Magnesite Ltd. owned by Tamil Nadu State Government are the major ones. According to the petitioner there are about 10,000 workmen in all the three companies together. Previously these three companies used to enter into a common wage settlement with the Unions. Ext.W1 is such a common settlement of 1987 and Ext.W2 is the settlement of 1990. After 1990 this practice seems to have come to an end. Ext.W3 is the common settlement involving Burn Standard Company and Tamil Nadu Magnesite Ltd. in 1995. A separate settlement was entered into by the Respondent and its Unions in this year. It is admitted by MW1 that the practice of entering into common settlement continued up to 1995 and thereafter separate settlements were being entered into. Even after they started to enter into separate settlements the terms of such settlements continued to be the same upto 2001, even as admitted by MW1.

31. Exts.W5 to W12 are separate settlements entered into by the three companies including the Respondent. Even though initially the terms were the same in spite of separate settlements, subsequently the terms also differed and the amount of increase in wages also differed. While the workmen of other two companies were getting higher wages this was not the case with the workmen of the Respondent. Their wages seem to have dwindled when compared with the wages that were obtained by the workmen of the other two establishments.

32. Even before expiry of the last wage settlement between the Respondent and the Unions on 31.12.2009 discussion seems to have been started based on the Charter of Demands submitted by the Petitioner Union on 18.11.2009. There

was no progress in the discussion and thereafter the three Trade Unions in the Respondent establishment viz. Magnesite National Labour Union (the petitioner), Labour Progressive Federation and CITU joined together and submitted a fresh Charter of Demands. This Charter of Demands is available along with Ext.W13-the strike notice given by the Unions. Though discussion had taken place for entering into a final settlement such a settlement could not be arrived at. So the Respondent entered into an interim settlement with the Unions on 16.10.2010. This settlement is marked as Ext.W15. As per Ext.W15 the Respondent agreed to pay Rs. 15,000/- to all permanent workmen on its rolls as interim relief before 16.10.2010 and this was to be adjusted against the benefits that will be available to the workmen on final settlement. By Clause-4 of the settlement the Unions gave an assurance to the Respondent that their members will extend whole-hearted support to increase production. In the absence of final settlement, another interim settlement was entered into between the parties and this is marked as Ext.W18. By this settlement dated 11.01.2012 the Respondent agreed to pay additional interim relief of Rs. 13,000/- to all the permanent workmen on its rolls. It was also agreed that a final settlement will be arrived at before 31.03.2012. It is not in dispute that the Respondent had paid the interim relief agreed upon as per two settlements to the workmen. However, a final wage settlement was not arrived at even before 31.03.2012, the date given in Ext.W18. In Ext.W18 also there is a clause that the workmen will improve productivity and the Respondent on its part has agreed to provide necessary facilities to the workmen. Since a common settlement did not materialize the Respondent entered into a settlement with one of the Unions on 08.01.2013. This is marked as Ext.M31. There is no reference to this settlement in the Claim Statement initially filed by the petitioner. Much after that, after the matter has been referred to this Tribunal, the Respondent entered into settlement with individual workmen separately by which they agreed to accept a lump sum in final settlement of their demands. Ext.W32 is a specimen of said settlement entered into by one of the workmen with the Respondent. Ext.M34 is a list of the workers who are said to have received lump sum as per the settlement in full and final settlement of arrears of wages and allowances for the years 2010, 2011 and 2012. WW1 who is the Joint Secretary of the Petitioner Union has admitted during his cross-examination that 102 of the 105 members of the Union had signed the settlement, though he would say that it is the result of coercion, undue influence, etc.

33. The counsel for the Respondent had referred to the decision in *HERBERTSONS VS. THE WORKMEN OF HERBERTSONS LTD.* reported in AIR 1977 SC 322 in support of his argument that Ext.M31 the settlement already entered into by another Union and accepted by the members of the Petitioner Union is a fair and proper one. Here the Apex Court has held that it is not possible to consider the settlement in bits and pieces and hold some parts good and acceptable and others bad. Unless it can be demonstrated that the objectionable portion is such that it completely outweighs all the other advantages gained, the Court will be slow to hold a settlement as unfair and unjust. A settlement has to be accepted or rejected as a whole, it was held. The counsel for the Respondent has also referred to the decision in *M/s TATA ENGINEERING AND LOCOMOTIVE CO. LTD. VS. THEIR WORKMEN* reported in AIR 1981 SC 2163 in this respect. Here it was held that if the settlement had been arrived at between the Company and by the vast majority of the concerned workers with their eyes open and was also accepted by them in its totality it must be presumed to be just and fair and not liable to be ignored merely because a small number of workers were not parties to it or refused to accept it or because the Tribunal was of the opinion that the workers deserved higher emolument than they themselves thought they did. A settlement cannot be weighed in a golden scale and the question whether it is just and fair has to be answered on the basis of principles different from those which come into play when the Industrial Dispute is under adjudication, it was held.. In the light of the above it can be considered whether a settlement as a package is beneficial to the workmen and is a fair and proper one. So also the question whether the workmen have accepted it on account of coercion, persuasion, etc. is also a matter to be considered in this background so as to decide whether the settlement which according to the Respondent was accepted by them is fair and proper and is what they thought is fair to them.

34. As already stated, the case of the petitioner is that its members were made to accept the settlement by threat, coercion, intimidation, etc. I have already found that the dispute exists in spite of the settlement and this Tribunal is within its power to examine the validity of the claim of the Petitioner independent of the settlement. In spite of that it is not improper to consider the case of the petitioner that the workmen who are its members were coerced by the Management to make them accept the settlement.

34. WW2 to WW10 and WW14 are workmen of the Respondent establishment who are members of the Petitioner Union examined to prove the case that they are made to accept the settlement by using methods like threat, coercion, etc. It is to be seen what is the evidence given by these witnesses. WW2 who is now working as Mechanic-cum-Operator in the Earth Moving Department has stated that MW1, Paul Gurusamy and MW4, Noel who is the Maintenance Manager had called him and told him that if he did not affix his signature in the letter prepared by the Management agreeing to abide by the terms of the settlement entered into with the other Union, he will be kept in the same post of Mechanic-cum-Driver till his retirement, but if he agreed to the terms of the settlement his position will be altered as Mechanic-cum-Operator. He stated that it was not on his free mind and volition he has accepted the terms of the settlement but the same was imposed on him. He stated during his cross-examination that MW4 was present when

he was forced to sign the settlement on 24.01.2013 but no one else was present. As seen from the cross-examination the witness seems to have been given a promotion on 01.04.2013, two months after he signed the settlement.

35. WW3 who is working in the Engineering Department has also given evidence more or less on the same lines as that of WW2. He has stated that the Management has secretly arrived at a settlement with the LPF Union and did not call the Petitioner Union for bilateral talks before entering into such a settlement. According to him he was given a quarters in the year 2010. MW1 and his superior, Periaswamy is said to have called him and told him that if he did not put his signature in the document prepared by the Management agreeing to abide by the terms of the settlement he will be evicted from the Quarters and disciplinary action would be initiated against him. According to him, he would not have been able to sustain himself if he was sent away from the quarters and that is why he has signed the letter put before him by the Management.

36. The other witnesses also have given evidence more or less on the same terms regarding the circumstances in which they had to sign the agreement agreeing to accept the terms of the settlement. WW4, a workman in the mines of the Respondent had stated that the Management had threatened that if he does not sign the letter he would not be extended with salary advance or cash loan, which he was availing frequently. There is the evidence of WW5 working as Mechanic that MW1 and MW4 had told him that unless he agrees to sign the settlement he will be retained in Grade-III and will not be considered for further promotion. The witness seems to have been subsequently promoted. He has of course stated during his cross-examination that promotion was given to him on the basis of his performance and skill. At the same time he has added that it was given to him only after he signed the settlement. According to him the individual employees have signed agreements agreeing to accept the settlement only out of compulsion. WW6 who is a Lab Sample Boy Mechanic has stated that he was told by the then General Manager, Veeraraghavan that he would be retained as workman till his retirement if he is not agreeing to the terms of the settlement. As seen from the cross-examination of this witness, though he started to work as Sample Boy in 2010 itself he was given promotion to this category only in 2014 after he signed the settlement.

37. WW7 who is a workman in Mines Production Unit has stated that he was made to sign the agreement on the threat that he would be transferred to Yard Section from the Mines Production Section in which he was working. According to him, the work in the Yard Section was hazardous and the threat was sufficient to make him sign the agreement. WW8 another workman in the Mines Production Unit also has stated that he has signed the agreement consequent to a threat of the same nature. There is also the evidence of WW9, another workman of Mines Production Unit that he was also told that the consequences of not signing the letter would be a transfer to the Factory Yard. This is the evidence given by WW10, another workman in the Mines Production also. According to WW14 he was also subjected to such threats. However, he was able to withstand them and he did not sign the agreement.

38. According to the Respondent the case of the Petitioner that the workmen were threatened and were made to sign the agreements is a concocted case. The counsel for the Respondent pointed out in support of his argument that most of the workmen have got the same kind of story regarding the execution of the threat. According to him this itself makes the entire case regarding threat, coercion, etc. unbelievable and unacceptable. However, it is a fact that many of the witnesses were given favours after they signed the settlement. The factum of promotion consequent to the signing of the letter spoken to by some of the witnesses is not disputed by the Respondent. Even though those workers have become eligible for promotion even earlier, the favour was conferred on them only after they signed the letter. Ext.W60 and Ext.W61 are orders in favour of two workmen viz. S/Sri Ravichandran and Sekar granting two special increments to them after agreement of acceptance were signed by them.

39. Ext.M42 is a letter given by the workers to the Respondent on 18.02.2013 expressing their willingness to receive the amount as per the settlement. The translation of the document made available states that they are receiving the amount consequent to the acceptance of the settlement under protest and without prejudice to the case pending. They have stated in this that receiving signatures individually from the workers regarding the settlement is illegal. The signatories to Ext.M42 include those who signed agreement on the same day. This itself is an indication of the fact that it was not whole-heartedly the workmen had accepted the settlement. They were aware of the pendency of the case and wanted the Union to continue the case. The workers who are in dire circumstances naturally might have accepted whatever amount that came to them to meet the immediate necessities. So the element of coercion and undue influence on the part of the Respondent in making the workmen sign the agreement of acceptance is probable and possible. There is also the fact that the Respondent has resorted to seeking individual settlement with the workmen while the Union of which they were members was hotly contesting the case before this Tribunal. In the normal course, the talks should have been with the Union and not with the workman separately, individually. This very attitude of the Respondent spells some undue influence on the Part of the Respondent. As per Schedule-5 of the ID Act granting wage increase to the workmen at crucial periods of Trade Union organization with a view to undermining the efforts of the Union is an unfair labour practice. The act of the Respondent in insisting in entering into settlements individually with the workman is something similar to this and is to be deprecated.

40. The argument advanced on behalf of the petitioner is that Ext.M31 settlement executed during the pendency of the dispute is not a fair one at all. According to the petitioner the settlement should have been one taking into account the wage prevalent in the industry as well as in the region. It was in the attempt to establish this that the petitioner has produced the previous common settlements involving the Respondent, Burn Standard Company (later on taken over by SAIL Refractories and named as such) and Tamil Nadu Magnesite Ltd. Even as admitted by MW1 the settlement was common and the workers of all the three factories including the Respondent were given the same benefits on every wage revision until 1995. Even thereafter though separate settlements were entered into, the benefits given were similar in nature. It was only later the Respondent departed from the practice of entering into the common settlement or giving common benefits to its workmen. The very fact that similar wage rise was given to all the workmen earlier would show that the nature of work done by the workmen in all three factories were one and the same. Again, the three factories were in the same region doing the work of mining magnesite ore and other allied ores.

41. In the attempt to establish that while fixing the wages, the wages prevalent in the region as well in the industry is to be taken into account, the counsel has referred to the dictums given by the Apex Court in this respect. Reference was made to the decision in DUNLOP RUBBER COMPANY LTD. VS. WORKMEN AND OTHERS reported in AIR 1960 SC 207. Here it was held that while considering the service conditions the Tribunal cannot abstain from seeing the fair conditions of service that prevail in the industry and the region. Reference was also made to the decision in VIJAY COTTON MILLS LTD. VS. THE WORKMEN AND ANOTHER reported in AIR 1960 SC 692. Here also fixing of wages based on the wage prevalent in the industry and the region was upheld by the Apex Court. In yet another decision in KAMANI METALS AND ALLOYS LTD. VS. THE WORKMEN reported in AIR 1967 SC 1175 it was held that it is always desirable that fixation of wages is in tune with what is prevalent in the industry or the region. The Apex Court has at the same time cautioned that comparable units may be compared but not units which are dissimilar. It was observed that while disparity in wages in industrial establishments similarly placed leads to discontent, attempting to level up the wages without making sufficient allowances for differences leads to hardships.

42. In spite of the workmen of the Respondent having been getting same wages and same benefits as that of the workmen of Burn Standard Company (Sail Refractories) and that of Tamil Nadu Magnesite Ltd earlier, there is vast disparity in the wages and other benefits now obtained by the workmen of the Respondent when compared with that of the other two. Ext.W10 is the copy of the settlement arrived at by the Respondent with the Petitioner and other Unions on 14.02.2007. In this the revised wage-scale (on daily wage basis) is from Rs. 59 to Rs. 66.50. The monthly increase is from Rs. 364/- to Rs. 434/- for different grades. Ext.W11 is the settlement executed by the management of Tamil Nadu Magnesite Ltd. with their Unions in the same year, in June 2007. The establishment has shifted to monthly wage scale by the time. An increase in between Rs. 400/- to Rs. 465/- is given to various grades in basic wage alone. Ext.W17 is the copy of settlement arrived at by the same establishment in August 2011. The scale of Grade-V which is the lowest grade itself starts from Rs. 2,800/- with Grade Pay of Rs. 1,300/- for Grade-I it is Rs. 5,200/- with Grade Pay of Rs. 1,900/- and for the Special Grade it is Rs. 5,200/- with Grade Pay of Rs. 2,000/-.

43. The huge disparity in wages is reflected more from the wage slips of the different establishments. WW12 is an employee of Tamil Nadu Magnesite Ltd. Ext.W37 is the wage slip of this workman. As seen from this he has joined the establishment in 1988. He is now working as attender and has drawn Rs. 19,238.62/- in January 2015. WW13 is an employee of the Sail Refractory Co. Ltd. He has joined the establishment in the year 1993 as an Unskilled Worker. He was made Semi-Skilled in 1995, Skilled Grade-II in 1996, Skilled Grade-II in 2002 and Skilled Grade-I in 2008. He is now in Super-Skilled Special Grade. Ext.W39 is the wage slip in respect of this witness. In February 2015 he had drawn Rs. 27,949.00 as salary. What is the position of a workman of the Respondent establishment when compared to the above? Exts.45 to Ext.W51 are the wage slips of WW14, an employee of the Respondent establishment for the period from 2009 to 2015. This witness had joined the Respondent establishment as an Apprentice in the year 1991 and was absorbed as permanent workman in the mines after two years. The wage he has drawn in January 2015 as seen from Ext.W51 is Rs. 13,115.39. In the year 2009 it was Rs. 7,899.00. Thus after 25 years of serving the establishment what he is now getting is just a little above Rs. 13,000/-.

44. It is not disputed by the Respondent that there is disparity in the wages of the workmen of its institution and the other two establishments which were going along with it earlier. The Respondent has been trying to justify this difference giving various reasons. The first and foremost reason given by the Respondent is that there is huge decrease in the production of the Respondent as the workmen had been resorting to a non-cooperative attitude. With the help of Ext.M3, the report of the National Productivity Council it is pointed out on behalf of the Respondent that each workman per shift are bound to produce at least 0.9 metric tons of Magnesite Ore. Ext.M3 shows that the National Productivity Council conducted a study and found that the workmen are wasting a lot of time, that out of 480 minutes available in a man shift, 185 minutes are not utilized for work. Based on the study they have suggested that the production norm based on effective utilization of loss of time will be 0.99 metric ton. According to the Respondent earlier the workmen were reaching almost this quantity in production. But subsequently, the quantity has come down and at present it has thoroughly decreased and has come down to just 0.25 metric tons. The counsel has pointed out

that by Ext.W15 and Ext.W18 the two interim settlements the Petitioner Union has agreed to increase production before final settlement of the wage revision. The petitioner has been harping on the fact that in Ext.W18 there is a further clause that the Management is to provide facility to increase the production. According to them such facility has not been provided and this was why there was no increase. It is alleged by the petitioner that all the facilities are provided to the retired workmen who were re-employed and also to the contract workmen while the regular workmen were denied of this. This is in answer to the case of the Respondent that the retired workmen who are re-employed and the contract workmen are producing more than the regular workmen. It is pointed out that the retired hands are those who have reached the age of 58 and yet they are producing more than the regular workmen. One thing that is to be noted is that the petitioner is not disputing the case of the Respondent that the present production level is only 0.25 metric tons while earlier it was much more. An attempt has been made by the petitioner to meet this case of the Respondent through the evidence given by the workmen of Tamil Nadu Magnesite Corporation and Sail Refractories Ltd. WW12 and WW15 who are the workmen of the Tamil Nadu Magnesite Ltd. have stated that the production norm in their factory is 250 kgs. per manpower. According to WW13, the workman of Sail Refractories Co. Ltd. the production norm for the said Company is 300 kgs. per manpower. However, no documents are available to show what is the production norm fixed for the above establishments. It is very much clear from the evidence on behalf of the petitioner as well as the evidence given by MW1 on behalf of the Respondent that production in the Respondent establishment has considerably gone down by years. The excuse given by the petitioner that facility was not provided by the Respondent does not seem to be very valid. What is the facility required for increasing the production? There is no case for the petitioner that the facilities that were available earlier were taken away by the Respondent. But production has come down. Certainly there is necessity of increasing production in the establishment in the attempt to justify the claim for higher wages. An establishment cannot subsist without the cooperation of the workmen. The establishment is not only of the Management but also of the workmen in the sense that it is what gives them the means for their subsistence. They are duty bound to work to the utmost and see that the production norm is reached. Even assuming that 0.99 metric tons which is fixed by the National Productivity Council is not reached they should achieve at least what is given in Ext.W62, the appointment order issued to a new incumbent in 2011. As per this, incentive is fixed for productivity of 0.6 metric ton and more incentive for more productivity. This document was produced by the petitioner to show that even according to the Respondent 0.99 metric ton is not the norm of productivity. If the details give by the Respondent are taken into account there would not be any difficulty for the workmen to achieve at least what is given in Ext.W62. The Respondent has been even earlier warning the workmen for decrease in productivity. Ext.M38 is the memo served on WW1 for drop in production. Ext.W39 is a caution notice issued to the same witness. Ext.M35-the Temporary Appointment Order issued to WW1 shows that the quantity of ore to be produced is fixed as 0.9 metric tons. So it is beyond doubt there is decrease in productivity and the workmen are to be make effort to increase the production in which case only the establishment could exist.

45. Still another argument that is advanced on behalf of the Respondent is that there is difference in the goods produced by the other two Companies and the Respondent. MW1 has spoken about this. It is clear is that the other two establishments are much larger with more productivity and they are government establishments. The petitioner has not made any effort to bring out what is the wage structure of the other private establishments in the area. Parity is sought only with the above two establishments. As stated by the Apex Court in KAMANY METALS' case the decision referred to earlier, when considering fixing of wage region and industry-wise the differences if any, also have to be taken into account. The fact remains that in 2011 itself the Respondent had departed from the practice of having a common settlement and having common wage structure. Probably this was because of the difference that somewhat existed in between the establishments. Even as seen from the wage slips and salary slips used for comparison there is much difference in the salary paid to the workmen of Sail Refractory Ltd. and Tamil Nadu Magnesite Ltd. So it is clear that it is not the nature of work alone, that is the basis for fixing the wage structure. Sail Refractory is producing huge quantities and is getting huge profit also. The Tamil Nadu Magnesite Ltd. is standing behind in these aspects. The Respondent establishment is behind Tamil Nadu Magnesite Ltd.

46. However, the above facts stated in favour of the Respondent are not reasons to deny wage increase to the workmen of the establishment in toto. As already stated a workman who had been sweating for more than 25 years is even now getting Rs. 13,000/- as wages. It was Rs. 9,000/- in 2009. This will be too insufficient to provide for a family when the present cost of living is taken into account. With this much amount he will not be able to meet the minimum requirements. After all, as already stated, the establishment is that of the workmen also and not of the Management alone. Unless the workmen are provided sufficiently, there is no meaning in the existence of an establishment. It is not a mere entity for making profit for the Management alone. It is to see that the wage given by it is sufficient for the workmen at least to have a comfortable existence though not a luxurious one. It is not enough that it is a bare existence. The wage now provided by the Respondent in any case will not meet this norm. In this sense it could be seen that the settlement arrived at by the Respondent with the workmen is not a fair and proper one. There is necessity to have increase in the wages.

47. The petitioner and other unions had submitted a common Charter of Demands raising 35 demands, as seen from Ext.W13. However, in the Claim Statement filed before this Tribunal the Petitioner Union has restricted the demands to 15 in number. The demands are that the existing monthly wages of the workmen should be raised by Rs. 5,000/- and the increase should be merged with Basic Pay, the present DA of 2814 should be taken as base and the existing payment of Rs. 2/- per point should be raised to Rs. 4/- per point and 50% of such increase should be merged with the Basic Pay, Rs. 1000/- shall be paid towards HRA, LTA and Medical Allowance shall be paid on par with that of staff members, on completion of 10 years of service, service weightage shall be given for those eligible workmen, for every completed 5 years of service, on completion of 10 years of service workmen shall be given the next higher grade and on the completion of every 5 years thereafter next higher grade with increase in salary shall be given, all workmen shall be given designation as Semi-skilled, all workmen shall be paid 5% of Basic Pay with annual increment, the existing daily wage pattern shall be changed to monthly wage pattern, 15 days sick leave and 15 days casual leave shall be given and half day leave facility shall be given for casual leave also, education allowance of Rs. 2,000/- for children studying from 10<sup>th</sup> to 12 standard, Rs. 3,000/- for children studying for ITI and Diploma courses and in College and Rs. 5,000/- for those studying engineering, medicine and law, heat allowance, night shift allowance, washing allowance, dust allowance and welfare allowance shall be doubled and funeral expenses payable shall be raised from Rs. 5,000/- to Rs. 7,500/-.

48. Ext.M31 is the settlement entered into by the Respondent with LPF Union considering the demands, However, what is the increase given as per Ext.M31? The increase per day on the basic wages is Rs. 17.31 for Grade-I workman and Rs. 20.58 for Grade-V workman, the amount payable to those in the three grades in between being something in between. The total increase given to the employees of Grade-I is Rs. 861.38 per month including Basic Pay, House Rent Allowance and Washing Allowance. Service weightage given is one increment for 15 years service at the rate of Rs. 74.10 per month, two increments at the rate of Rs. 148.20 per month for 25 years service and three increments at the rate of Rs. 222.30 per month for 30 years of service. There is some slight increase for those working in Grade-II to Grade-V. Then there is increase in the allowances like night shift allowance, leave travel allowance, heat allowance, etc. In spite of this increase the wage, WW14, a workman having service of 26 years in 2015 is Rs. 13,000/-. As per Ext.W45 he has received just Rs. 7,899/- in January 2009. In January 2010 this is Rs. 8,694/-, as seen from Ext.W46. The exact amount that might have been payable to him after Ext.M31 must be something more than this. However, the increase would not go beyond Rs. 1,100/- as seen from Ext.M31. On the other hand, the workman of the other two establishments who were earlier on par with the workman of the Respondent establishment are getting much more amount than the increase given by Ext.M31. I am not trying to compare the wages of the workmen of the Respondent establishment with the wages of the workmen of Sail Refractories Ltd. for the reason that they are given far more benefits than that of workmen of the Respondent and even that of the workmen of Tamil Nadu Magnesite Ltd. However, even a comparison with the salary payable to the workmen of Tamil Nadu Magnesite Ltd. would show that there is considerable disparity in between two. Ext.W17 is the settlement entered into by the Management of Tamil Nadu Magnesite Ltd. with their Unions in respect of the period from 01.12.2010. The revised wage for Grade-V (this is the lowest grade in the said establishment) is Rs. 4,800-10,000 plus Grade Pay of Rs. 1,300/-. For Grade-I which is equal to Grade-V of the respondent establishment the scale is Rs. 5,200-20,200 plus Grade Pay of Rs. 1,900/-. There is a special grade also for the said establishment and the pay for this grade is higher. I do not say that the pay of the workmen of the Respondent establishment should be equal to that of the workmen of Tamil Nadu Magnesite Ltd. Their pay seems to have been fixed on par with that of the staff members and it was agreed to be revised based on the Pay Commission report. At the same time, the workmen of an establishment who is doing the same kind of work should have at least wages which is reasonable even if not on par with that of other establishment. Certain reasons given on behalf of the Respondent for not giving wages on par with that of even Tamil Nadu Magnesite Ltd. have to be accepted for the reason that the Respondent is a private establishment, having not so much productivity as that of the other and not having even quantity of production as that of the other. In fact the lower productivity which is to be attributed to the workmen also is a reason for not granting so much increase. In spite of all these, as already stated, the workmen of the Respondent establishment are to have wages with which they should be able to have a comfortable living.

49. For granting increase, rather than considering each of the items specified in the Claim Statement, it would be proper if some percentage of increase is from what is given as per Ext.M31 is given. An increase of Rs. 10% more from that prevails as per Ext.W10 in Basic Wage, HRA and Washing Allowance will be reasonable in the circumstances. Thus, apart from the increase given in Ext.M31 in this respect, an increase at the rate of 10% from what is provided as per Ext.W10 should be added so that there will be reasonable increase in Basic Wage, HRA and Washing Allowance. Rather than one increment after 15 years service as service weightage this increment shall be given after completion of 10 years. Thereafter, on completion of every 5 years one more increment shall be payable. Night Shift Allowance, Leave Travel Allowance and Heat Allowance, Operational Allowance and Parade Allowance shall be the same as given in Ext.M31. Education Allowance shall be paid at the rate of Rs. 1,500/- per year for children studying in ITI, Diploma and Degree courses in recognized institutions and Rs. 2,000/- for any professional degree courses. Other benefits granted as per Ext.W31 and all other existing benefits will prevail.

On the basis of the above discussion, awards are passed as below:

**ID 83/2012**

- In addition to the increase given by Ext.M31, the workmen are entitled to increase at the rate of 10% of what is provided by Ext.W10 in Basic Wage, HRA and Washing Allowance.
- Service weightage shall be given at the rate of one increment to all workmen on completion of 10 years and one increment thereafter on completion of every 5 years, (at the rate shown in Ext.M31).
- Education Allowance shall be paid at the rate of Rs. 1,500/- for children studying in ITI, Diploma and Degree in recognized institutions and at the rate of Rs. 2,500/- for children studying in any Professional (4 years) Degree Courses every year.
- All other benefits granted as per Ext.M31 shall prevail. So also all other existing benefits also will prevail.
- The workmen are bound to increase the productivity.
- The benefits as per the Award shall be paid to the workmen within two months of the publication of the Award.
- The amount already received by the workmen on the basis of Ext.M31 and other individual settlements shall be adjusted towards the total amount due to the workmen.

**ID 85/2012**

- The wage cut for 8 days implemented by the Respondent is reduced to wage cut for 2 days.

The references are answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 30<sup>th</sup> June, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1 <sup>st</sup> Party/Petitioner Union	:	WW1, Sri A. Thirumalai
		WW2, Sri P. Vellaiyappan
		WW3, Sri V. Baskar
		WW4, Sri K. Sitheeswaran
		WW5, Sri A.S. Ravichandran
		WW6, Sri R. Elumalai
		WW7, Sri C. Govindaraji
		WW8, Sri T. Jeyavel
		WW9, Sri A. Soundarajan
		WW10, Sri E. Maharaja
		WW11, Sri V.K. Nallamuthu
		WW12, Sri M. Annamalai
		WW13, Sri K. Saravanan
		WW14, Sri S. Alagappan
		WW15, Sri A. Mahalingam
For the 2 <sup>nd</sup> Party/Respondent	:	MW1, Sri A. Paul Gurusamy
		MW2, Sri P.G. Kalidass
		MW3, Sri P. Periasami
		MW4, Sri C. Noel
		MW5, Sri M. Palanisamy



**Documents Marked:****On the Petitioner's side**

<b>Ext.No.</b>	<b>Date</b>	<b>Description</b>
Ext.W1	17.08.1987	Copy of Settlement arrived at u/s 12(3) of the ID Act, 1947.
Ext.W2	19.10.1990	Copy of Settlement arrived at u/s 12(3) of the ID Act, 1947.
Ext.W3	13.05.1995	Copy of Settlement arrived at u/s 123(3) of the ID Act, 1947.
Ext.W4	14.05.1995	Copy of Settlement arrived at u/s 12(3) of the ID Act, 1947 with the Respondent Management .
Ext.W5	28.03.1998	Copy of Memorandum of Understanding arrived at by the Management of Tamil Nadu Magnesite Ltd., with its workmen.
Ext.W6	28.03.1998	Copy of Memorandum of Understanding arrived at by the Respondent Management with its workmen.
Ext.W7	31.03.1998	Copy of Settlement arrived at u/s 12(3) of the ID Act, 1947 by the Management of Burn Standard Company Ltd. and Tamil Nadu Magnesite Ltd. with their workmen.
Ext.W8	28.04.2004	Copy of Settlement arrived at u/s 12(3) of the ID Act, 1947 by the Respondent Management with their unions .
Ext.W9	06.02.2007	Copy of Settlement arrived at u/s 18(1) of the ID Act, 1947 by the Respondent Management with Petitioner and other Unions.
Ext.W10	14.02.2007	Copy of Settlement arrived at u/s 12(3) of the ID Act, 1947 by the Respondent Management with Petitioner and other Unions
Ext.W11	06.06.2007	Copy of Settlement at u/s 18(1) of the ID Act, 1947 by the Management of Tamil Nadu Magnesite Limited with their Unions.
Ext.W12	14.06.2007	Copy of Settlement arrived at u/s 12(3) of ID Act, 1947 by the Management of Tamil Nadu Magnesite Limited with their Unions .
Ext.W13	02.08.2010	Copy of Notice of Strike given by the Petitioner and other Unions with annexure containing charter of demands .
Ext.W14	01.09.2010	Copy of Notice issued by the Assistant Labour Commissioner (Central-I), Chennai
Ext.W15	16.10.2010	Copy of Settlement arrived at u/s 18(1) of the ID Act, 1947 by the Respondent Management with the Petitioner and other Union.
Ext.W16	11.07.2011	Copy of Notice issued by the Assistant Labour Commissioner (Central-I), Chennai
Ext.W17	22.08.2011	Copy of Settlement arrived at u/s 18(1) of the ID Act by the Management of Tamil Nadu Magnesite Limited with their Unions.
Ext.W18	11.01.2012	Copy of Settlement arrived at u/s 18(1) of the ID Act, 1947 by the Respondent Management and the Petitioner and other Unions.
Ext.W19	05.04.2012	Copy of Show Cause Notice issued by the Respondent Management .
Ext.W20	23.04.2012	Copy of notice issued by the Petitioner .
Ext.W21	30.04.2012	Copy of notice issued by the Petitioner .
Ext.W22	30.04.2012	Copy of Joint Letter issued by the Petitioner and other Unions to the Respondent.
Ext.W23	02.05.2012	Copy of notice issued by the Respondent.
Ext.W24	05.05.2012	Copy of notice issued by the Petitioner and other unions to the Respondent .
Ext.W25	09.05.2012	Copy of Interim Order passed by the Hon'ble High Court of Madras.
Ext.W26	30.06.2012	Copy of notice issued by the Respondent.
Ext.W27	02.07.2012	Copy of Joint Letter given by the Petitioner and other Unions to the Respondent Management .

Ext.W28	06.07.2012	Copy of notice issued by the Respondent.
Ext.W29	13.08.2012	Copy of Joint Letter sent by the Petitioner and CITU Union to the Respondent Management.
Ext.W30	29.09.2012	Copy of Settlement arrived at u/s 12(3) of the ID Act, 1947 by the Management of Sail Refractory Company Ltd. with its workmen.
Ext.W31	10.11.2012	Copy of circular issued by the Respondent.
Ext.W32	19.01.2013	Copy of Settlement arrived at u/s 18(1) of the ID Act, 1947 by the Respondent Management with one of the workman by name T. Manickam.
Ext.W33	18.02.2013	Copy of letter from the workers to the Respondent Management.
Ext.W34	07.11.2013	Copy of the order issued by the Ministry of Labour & Employment, Government of India.
Ext.W35	02.08.2010	Copy of notice of strike given by Petitioner Union and other Unions with annexure containing charter of demands.
Ext.W36	01.09.2010	Copy of notice issued by the Assistant Labour Commissioner (Central-I), Chennai.
Ext.W37	January 2015	Copy of Wage slip of M. Annamalai.
Ext.W38	March 2014	Copy of Wage slip of K. Saravanan.
Ext.W39	Feb. 2015	Copy of Wage Slip of K. Saravanan .
Ext.W40	17.05.2013	Copy of Second Annual Report 2012-2013 of Sail Refractory Company Ltd.
Ext.W41	14.10.2006	Copy of Settlement arrived at u/s 18(1) of the ID Act, 1947 by the Management of Burn Standard Co. Ltd. with their Unions re: bonus for the year 2005-2006.
Ext.W42	29.10.2007	Copy of Settlement arrived at u/s 18(1) of the ID Act, 1947.
Ext.W43	July 2013	Copy of Wage Slip of G. Arumugam.
Ext.W44	08.10.2009	Memorandum of Settlement arrived at under Section-18(1) of the Industrial Disputes Act, 1947 between the Management of M/s Burn Standard Co. Ltd. Salem Unit and Office Bearers of other Union over the demand of Bonus, Annual Production Incentive, Ex-Gratia, recoverable Advance for the Accounting Year 2008-2009.
Ext.W45	Jan. 2009	Copy of Wage Slip of S. Alagappan.
Ext.W46	Jan. 2010	Copy of Wage Slip of S. Alagappan.
Ext.W47	Jan. 2011	Copy of Wage Slip of S. Alagappan.
Ext.W48	Jan. 2012	Copy of Wage Slip of S. Alagappan.
Ext.W49	Jan. 2013	Copy of Wage Slip of S. Alagappan.
Ext.W50	Jan. 2014	Copy of Wage Slip of S. Alagappan.
Ext.W51	Jan. 2015	Copy of Wage Slip of S. Alagappan.
Ext.W52	March 2015	Copy of Wage Slip of Mahalingam.
Ext.W53	18.09.2009	Copy of Balance Sheet of Tamil Nadu Magnesite Ltd. as on 31.03.2006.
Ext.W54	12.08.2010	Copy of Balance Sheet of Tamil Nadu Magnesite Ltd. as on 31.03.2000.
Ext.W55	31.08.2011	Copy of Balance Sheet of Tamil Nadu Magnesite Ltd. as on 31.03.2011.
Ext.W56	06.09.2013	Copy of Balance Sheet of Tamil Nadu Magnesite Ltd., as on 31.03.2013.
Ext.W57	26.10.2007	Copy of Settlement arrived at u/s 18(1) of the ID Act, 1947 by the Management of Tamil Nadu Magnesite Limited with their unions re: bonus for the year 2006-2007.
Ext.W58	12.10.2009	Copy of Settlement arrived at u/s 18(1) of the ID Act, 1947 by the Management of Tamil Nadu Magnesite Limited with their Unions re: bonus for the year 2008-2009.
Ext.W59	02.08.2010	Copy of Strike Notice issued by the Petitioner and other Unions.

Ext.W60	16.04.2014	Copy of Office Order issued to Sri A.S. Ravichandran, Junior Mechanic granting two special increments.
Ext.W61	16.04.2014	Copy of Office Order issued to Sri M. Sekar, Junior Mechanic granting two special increments.
Ext.W62	04.04.2011	Copy of temporary appointment order issued by the Respondent Management.
Ext.W63	28.10.2015	Copy of Settlement arrived at u/s 12(3) of the ID Act, 1947 between the Management of Sail Refractory Co. Ltd., Salem and seven trade unions.

**On the Management's side**

<b>Ext.No.</b>	<b>Date</b>	<b>Description</b>
Ext.M1	08.09.2009	Police complaint given by the Superintendent of Mines of the Respondent.
Ext.M2	11.09.2009	Letter of regret and assurance of non-recurrence from the workers regarding 03.09.2009 gherao.
Ext.M3	Sept., 2009	Latest study by National Productivity Council on Productivity Norms – Extract.
Ext.M4	16.10.2010	18(1) Settlement entered into by the Respondent with LPF and INTUC Unions.
Ext.M5	10.01.2012	Clippings from the Tamil Newspaper “Kalaikathir”.
Ext.M6	11.01.2012	18(1) Settlement entered into by the Respondent with LPF, INTUC and CITU Unions.
Ext.M7	04.04.2012	Letter issued by the Respondent to the Deputy Superintendent of Police.
Ext.M8	05.04.2012	Clippings from the Tamil News paper daily “Dinakaran”.
Ext.M9	05.04.2012	Complaint lodged by the Staff and Executive members of the Respondent with the Inspector of Police, Omalur.
Ext.M10	05.04.2012	Receipt issued by the Omalur Police Station acknowledging the receipt of the complaint given.
Ext.M11	05.04.2012	Show Cause Notice issued by the Respondent.
Ext.M12	10.04.2012	Letter issued by the Magnesite Workers Progressive Union (LPF).
Ext.M13	23.04.2012	Notice issued by the Respondent .
Ext.M14	30.04.2012	Notice issued by the Respondent .
Ext.M15	30.04.2012	Joint Letter issued by the Magnesite National Labour Union (INTUC) and the Salem District Magnesite Labour Union (CITU).
Ext.M16	02.05.2012	Notice issued by the Respondent .
Ext.M17	05.05.2012	Joint Letter issued by the Magnesite National Labour Union (INTUC) and the Salem District Magnesite Labour Union (CITU).
Ext.M18	09.05.2012	Letter issued by the Respondent.
Ext.M19	09.05.2012	Copy of order of the High Court .
Ext.M20	11.05.2012	Letter from Sri V.K. Nallamuthu and Sri T. Udhayakumar advising the management to make payment immediately.
Ext.M21	12.05.2012	Sri S. Vaidyanathan, Advocate letter advising the management to release payment.
Ext.M22	15.05.2012	The management notice regarding payment of the deducted amount.
Ext.M23	09.06.2012	Sri S. Vaidyanathan, Advocate's letter.
Ext.M24	14.06.2012	Sri T. Poornam, Advocate's reply to Sri S. Vaidyanathan, Advocate.
Ext.M25	30.06.2012	The Management notice informing its intention to deduct the amount repaid from June 2012 wages.
Ext.M26	02.07.2012	Letter from Sri V.K. Nallamuthu and Sri T. Udhayakumar advising the management not to deduct 8 days wages.

Ext.M27	06.07.2012	The Management's notice informing its intention not to deduct the amount from June 2012 wages.
Ext.M28	-	Certified Standing Orders.
Ext.M29	-	Pamphlet issued by Magnesite Workers Progressive Union (LPF) on 16.06.2012.
Ext.M30	-	Pamphlet issued by Magnesite National Labour Union INTUC) & Salem District Magnesite Union on 22.06.2012.
Ext.M31	08.01.2013	18 (1) Settlement dated 08.01.2013 entered into by the Respondent with Magnesite Workers Progressive Union.
Ext.M32	10.03.2012	Price list of Tamil Nadu Magnesite Limited, Salem.
Ext.M33	22.11.2012	Price list of SAIL Refractories Company Ltd., Salem.
Ext.M34	05.11.2013	List of workers who have received the lumpsum amount in full and final settlement of arrears of wages and allowances for the years 2010, 2011 and 2012 and who have not received the same as on 05.11.2013.
Ext.W35	01.01.1991	Copy of temporary appointment order issued to A. Thirumalai.
Ext.W36	01.01.1992	Copy of probation order issued to A. Thirumalai.
Ext.W37	11.04.1997	Copy of Memo given to Sri Alagappan, the petitioner witness for building stack with voids wherein his obligation to built 0.90 T/ms was specified.
Ext.W38	23.09.2009	Copy of Advisory Memo issued to A. Thirumalai.
Ext.W39	13.08.2010	Copy of caution notice issued to A. Thirumalai.
Ext.W40	01.06.2011	Copy of offer of the management .
Ext.W41	10.11.2012	Copy of circular.
Ext.W42	18.02.2013	Copy of letter from workers saying their willingness to receive the amount but under control.
Ext.M43	21.02.2013	Copy of a specimen copy of agreement entered with one of the workers.
Ext.M44	25.08.2014	Copy of letter regarding submission of Memorandum of Settlements to ALC (C), Chennai with a copy of acknowledgement.
Ext.M45	25.07.2015	Statement showing productivity achieved .
Ext.M47	Sept. 2011	Profit and Loss Account for the year ended 31.03.2011.
Ext.M48	21.09.2012	Profit and Loss Account for the year ended 31.03.2012.
Ext.M49	27.05.2013	Profit and Loss Account for the year ended 31.03.2013.
Ext.M50	28.10.2015	Financial impact as per revised demand of Magnesite National Labour Union.
Ext.M51	21.10.2015	Graph showing productivity by Departmental Workers.
Ext.M52	30.10.2015	copy of the Joint Memo dated 30.10.2015 signed before RLC (C), Chennai.
Ext.M53	02.11.2015	Lumpsum amount paysheet pertaining to the years 2010, 2011 and 2012.

नई दिल्ली, 31 अगस्त, 2016

**का.आ. 1878.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एयरपोर्ट अथॉरिटी ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ सं. 19/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-11011/5/2014-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 31st August, 2016

**S.O. 1878.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2015) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Airports Authority of India and their workman, which was received by the Central Government on 29.08.2016.

[No. L-11011/5/2014-IR (M)]

SAMIR KUMAR DAS, Under Secy.

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM - LABOUR COURT,  
CHENNAI**

Monday, the 25th July, 2016

**Present :** K.P. PRASANNA KUMARI, Presiding Officer**Industrial Dispute No. 19/2015**

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Airports Authority of India and their workman)

**BETWEEN :**

The General Secretary : 1<sup>st</sup> Party/Petitioner Union  
Indian Airports Kamgar Union  
Qtr No. B-140, Pocket-A  
INA Colony,  
New Delhi-110023

**AND**

The General Manager : 2<sup>nd</sup> Party/Respondent  
M/s. Airports Authority of India  
Southern Region  
Chennai-600027

**Appearance:**

For the 1<sup>st</sup> Party/Petitioner Union : M/s. Balan Haridas, Advocates  
For the 2<sup>nd</sup> Party/Respondent : Sri C.K.M. Appaji, Advocate

**AWARD**

The Central Government, Ministry of Labour & Employment, vide its Order No. L-11011/5/2014-IR (M) dated 16.02.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

*“Whether the action of the Management of AAI, Chennai in connection with allowing the leaders of Airport Authority Employees Union during the process of Transfer Committee and DPC is justifiable or not? If not, to what relief the representative of the Petitioner Union is entitled to?”*

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 19/2015 and issued notices to both sides. Both sides have entered appearance through their counsel and have filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement are as below:

There are three major Trade Unions operating in the Respondent establishment viz. Airport Authority Employees Union (AAEU), Airport Authority of India Workers Union (AAIWU) and the Petitioner Union by name Indian Airports Kamgar Union (IAKU). There is rivalry between the Petitioner Union and AAEU because of Trade Union activities. The Management has been violating the laid down rules and its policies to victimize the leaders of the Petitioner Union at the instance of the leaders of AAEU. The last election to elect the bargaining agent was held on 29.01.2013. The Petitioner Union secured 48.24% of the votes and AAEU obtained 49.77%. Even though, AAEU did not secure simple majority, the Respondent Management had recognized the said Union. A Writ Petition filed against

this is pending before the Delhi High Court. On recognizing AAEU Union the Respondent in collusion with the said Union has been doing things to harass and victimize the Office Bearers of the Petitioner Union. Many of the employees belonging to the Petitioner Union have been illegally transferred. Promotions due to many of the members were denied also. There is no valid transfer policy or promotion policy for the Respondent Management. Though, the Respondent is to frame rules and regulations as per Sections-18(7), 42 and 43 of the AAI Act, this was not done. The Respondent has formulated a transfer policy and recruitment and promotion rules without prior approval of the Central Government and without gazette notification as required under the AAI Act. These have no sanction of law and are invalid. Transfers and promotions are exclusive functions of the management of an organization, the Respondent has been associating the Regional Secretary of the AAEU in Southern Region in the Annual Transfer Committee which makes recommendations for annual transfers of employees. The Regional Secretary who has been so co-opted as a member of the Annual Transfer Committee has been taking undue advantage of the position and has been favouring the members of AAEU Union and victimizing the members of the Petitioner Union by unjustified transfers. Many of the seniors in a Centre who are members of AAEU have been retained while the members of the Petitioner Union were illegally transferred. As per the transfer policy, transfer has to be made on the basis of the seniority of the worker at the station in the respective region. However, Maruthi Kumar, Venkataraman and Sarath Chinha were recommended for transfer against this policy. As per the transfer policy, employees left with less than 5 years for retirement are exempted from transfer. However, the transfer committee had recommended transfer of Ravi Kumar who has been Vice-President of the Petitioner Union, though he was having less than 5 years of service before retirement. Venkataramana who was transferred was a protected workman for the year 2012-2013 by order dated 09.12.2013. Though the employees had requested the Management to cancel the illegal transfer orders it was not done. The victimization of the Office Bearers and acting members of the Petitioner Union is with the intention to dilute the Petitioner Union and strengthen AAEU. The Respondent is having the Office Bearers of AAEU in their Departmental Promotion Committee also. Members of the Petitioner Union are denied promotion at the instance of the representative of AAEU who forms part of the promotion committee. AAI Act does not permit participation of the Union in the administration. The Act of the Respondent in associating the representatives of AAEU with the transfer and Departmental Promotion Committees is arbitrary, discriminatory and illegal. An award may be passed holding that the action of the Respondent in allowing the leaders of the AAEU to be part of the Transfer Committee and Departmental Promotion Committee is illegal, arbitrary and contrary to law and consequently directing the Respondent to withdraw the illegal transfers and also prohibiting it from effecting such transfers in future.

4. The Respondent has filed Counter Statement contending as below:

The allegation that the Management is acting hand in glove with AAEU on various issues is not correct. The Respondent was not partial towards the Petitioner Union at any point of time. The Petitioner is one of the strongest Unions in the Respondent establishment and had contested various Union elections and had been declared as recognized union. On those occasions the Management had given due regard to the Petitioner. The Petitioner had lost the election held on 29.11.2013. The AAEU who secured highest number of votes in the election was declared as the recognized Union subject to the outcome of the Writ Petition pending before the Hon'ble High Court of Delhi in between the Petitioner Union and other Unions. It is incorrect to state that the Respondent is harassing and victimizing the Office Bearers and Members of the Petitioner Union in collusion with the AAEU, which is the recognized Union. It is also incorrect to state that the Office Bearers and Members of the Petitioner Union have been illegally transferred. The Departmental Promotional Committee is constituted only with the members recommended by Corporate Headquarters. Promotions are granted as per recruitment and promotion guidelines issued by the Corporate Headquarters. Union leader or representative of the Unions were not allowed to participate in the Departmental Promotional Committees. As far as transfers are concerned, representative of the recognized Union was allowed to co-opt / associate in the transfer committee based on letter from the Corporate Headquarter as it involved the interest of the staff. The Regional Secretary of IAKU was also co-opted as a member of the transfer committee when they were recognized. However, as per the Headquarter's letter dated 23.05.2014 no union is involved in the Transfer Recommendation Committee from 2014. The promotions and transfers in the Respondent establishment are made strictly as per the laid down policies issued from time to time. It is incorrect to state that the Respondent transferred members of the Petitioner Union in association with the Regional Secretary of AAEU. The employees named in the Claim Statement posted at Hyderabad Airport were transferred based on their station seniority. Ravi Kumar who is due for transfer was granted exemption on the ground of children education, based on the transfer policy. The facility of transfer to home region or nearest station when in superannuation period will not apply to employees whose transfer has been deferred on their own request for their personal reasons. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder in answer to the Counter Statement denying the allegations in the Counter Statement and reiterating the case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and Ext.W1 to Ext.W27 and Ext.M1 to Ext.M12.

7. **The points for consideration are:**

- (i) Whether the action of the Respondent in allowing the representatives of AAEU during the process of Transfer committee and Departmental Promotion Committee is justified?
- (ii) What, if any, is the relief to which the Petitioner Union is entitled?

**The Points**

8. Election to find out the bargaining agent in the Respondent establishment was held on 29.01.2013. AAEU which secured 49.77% of the votes was declared the recognized union of the Respondent establishment. The Petitioner Union which has obtained 48.24% votes had to remain outside the position of bargaining agent. A Writ Petition filed before the Hon'ble Delhi High Court challenging the decision of the Respondent, recognizing AAEU as the bargaining agent is said to be pending.

9. In the Claim Statement the petitioner has stated that the Respondent in association with the recognized union had been victimizing the Office Bearers and Active Members of the Petitioner Union and had been favouring the members of the recognized union. It is alleged by the Petitioner Union that the Respondent does not have validly framed rules and regulations regarding the transfer policy and also promotion policy. It is alleged by the petitioner that the Respondent has started the practice of co-opting the Regional Secretary of the AAEU, Southern Region, which is the recognized Union as a member of the Transfer Committee and the Regional Secretary has been using this opportunity to do favours to his own men and effect transfer of men of the Petitioner Union in an unreasonable manner. According to the Petitioner Union administration of the establishment is the task of the Management only and the recognized union could not be allowed to associate with it.

10. One limb of the Schedule of reference is against allowing the representative of the recognized union to be a part of the transfer committee. The Respondent has not denied the case of the Petitioner Union that the Regional secretary of AAEU has been participating in the Annual Transfer Committee. According to the Respondent this was the practice prevailing and the representative of the Petitioner Union also had been part of the Transfer Committee while it had been the recognized Union. However, this is denied by the Petitioner. The Respondent has stated in the Counter Statement that the practice of co-opting a member of the recognized Union to the Transfer Committee has been put to an end as per the instruction from the Headquarters vide letter dated 23.05.2014. The case of the Respondent is that after this there is no Union representative in the Transfer Committee. The Respondent has filed affidavit at the late stage of trial stating that after the above instruction the Union is not permitted to participate in the Transfer Committee.

11. So far as Departmental Promotion Committee is concerned also the Petitioner has got a case that representative of the recognized Union is part of this also. However, this case is denied by the Respondent. WW1, the General Secretary of the Petitioner Union has given evidence to the effect that the recognized Union was interfering in the promotions also. The apprehension of the petitioner that there will be such interference in the future is natural. So it is only proper that relief is granted to the petitioner against the recognized Union participating in the Transfer and Promotion Committees.

12. In the Claim Statement the petitioner has requested that the Respondent should be directed to withdraw the illegal transfers and prohibit such transfers in future. This claim of the petitioner is to be rejected even for the reason that this is not the subject-matter of Schedule of reference. The petitioner does not seem to have requested to cancel the illegal transfers when the dispute was raised and that must be why it does not find a place in the Schedule of reference.

13. Even otherwise the petitioner is not entitled to the relief claimed, it being so vague and general in nature. The relief portion only states that the illegal transfers are to be withdrawn. It does not state which illegal transfers are to be withdrawn. Merely because the representative of the recognized union was in the transfer committee all the transfers effected by those committees could not be termed as illegal. Each and every case should be examined to find out if any of the transfers were illegal. None of the transferees have approached this Tribunal stating that they were illegally transferred.

14. The petitioner has referred to a few persons in the Claim Statement alleging that they were illegally transferred. However, it could be seen from the evidence that they were transferred for valid reasons. MW1, Assistant General Manager, Human Resources examined on behalf of the Respondent has justified the transfers in his evidence. He has stated in the evidence that Ravi Kumar referred to in the Claim Statement was granted exemption on the ground of children's education and it was after the period of exemption was over transfer was effected. WW1, the General Secretary of the Petitioner Union has admitted during his cross-examination that Ravi Kumar was exempted from transfer due to education of his child in 2010 and it was thereafter he was transferred in 2011. That being the case he will not be eligible for exemption allowed to those to be retired within 5 years. Apart from this, as seen from the evidence of MW1, Ravi Kumar was transferred back to Hyderabad Airport itself at his option subsequently. Regarding Venkataramana, another transferee it is stated by MW1 that his request for retention at Vijayawada Airport was

considered and transfer was withheld for a period of six months and subsequently he was retained there itself after a new recruit joined Tiruchi. The Respondent has justified the transfer of Sharat Chinha stating that he was due to transfer and nothing is brought out against this. There is a case for the petitioner that Venkataramana was a protected workman for the year 2012-2013. However, the alleged transfer is for the period prior to that. There is no case for the petitioner that he was a protected workman prior to 09.10.2013 on which date order was made to the effect that he is a protected workman for the year 2012-2013. It is also claimed by the Petitioner that Gopal Reddy who was a Branch Secretary of the Petitioner Union was transferred from Hyderabad to Hubli in spite of his being a protected workman. However, this also is found false by the admission of WW1 as well as the related document. WW1 has admitted during his cross-examination that none of the persons who were transferred will not come under the protected category. Ext.W25 is the order dated 31.12.2013 by the Assistant Labour Commissioner declaring certain persons including Gopal Reddy as protected workmen. Apparently, the transfer of Gopal Reddy was prior to this order. WW1 has admitted that Gopal Reddy was exempted from transfer upto 2012 because of the education of his child and it was only thereafter he was transferred. So also Satish Kumar, another workman referred to in the Claim Statement had got exemption from transfer upto 31.03.2014 on medical grounds and it was only thereafter he was transferred. As stated, none of the above persons who are said to have been aggrieved by the transfer, had come before this Tribunal to state that they are actually aggrieved. As could be seen from the documents produced by the petitioner they were making representations on one or other grounds to exempt them from transfer. The representations seem to have been considered and they were retained for a period. The evidence is not sufficient to establish that the transfers are the result of victimization due to the presence of the representatives of the recognized Union in the transfer committee. As stated, in any case, this is not a subject of the Schedule of reference.

15. There is also a claim for the petitioner that the Respondent should be prohibited from effecting transfers illegally in the future. The transfers are said to have been illegal only on account of presence of the representative of the recognized Union in the transfer committee. Once this practice is stopped there is no such possibility in the future. In any case transfers are expected to be legal and it is a matter for individual consideration whether a particular transfer is illegal or improper. Such a blanket relief is not contemplated in the circumstances.

16. In view of my discussion above, the petitioner is entitled to relief in the matter of reference. Accordingly, an award is passed as below:

The Respondent is restrained from including the representatives of the recognized Union in the committees constituted for transfer and promotion.

The reference is answered accordingly.

(Dictated to the P.A., transcribed and typed by him, corrected and pronounced by me in the open court on this day the 25<sup>th</sup> July, 2016)

K. P. PRASANNA KUMARI, Presiding Officer

**Witnesses Examined:**

For the 1<sup>st</sup> Party/Petitioner Union : WW1, Sri G. A. Rudrappa  
For the 2<sup>nd</sup> Party/Respondent : MW1, Sri C. Thambi Thurai

**Documents Marked:**

**On the Petitioner's side**

Ext.No.	Date	Description
Ext.W1	31.03.1997	Letter of the Respondent enclosing the Office Order regarding terms and conditions of service
Ext.W2	03.04.1997	Letter from Government of India to the Respondent to take action to prepare the terms and conditions of service
Ext.W3	25.11.1999	Letter of the Respondent enclosing Transfer Policy
Ext.W4	25.10.2004	Letter of the Respondent amending/clarifying the transfer policy
Ext.W5	26.10.2004	Letter of the Respondent amending/clarifying the transfer policy
Ext.W6	2010	Combined transfer policy of the Respondent
Ext.W7	18.05.2010	Note Sheet of transfer committee recommending transfers
Ext.W8	19.05.2010	Order of transfer based on the transfer committee



Ext.W9	26.05.2010	Request made by one of the employee for change of place of transfer
Ext.W10	27.05.2010	Representation made by one of the employee to review the order of transfer
Ext.W11	14.06.2010	Representation made by one of the employee to cancel the order of transfer on medical grounds of his mother
Ext.W12	15.06.2010	Representation given by one of the employee for retaining at Begumpet, Hyderabad
Ext.W13	24.06.2010	Representation given by one of the employee for retention at Hyderabad
Ext.W14	06.09.2010	Representation made by one of the employee for retention at Begumpet, Hyderabad
Ext.W15	22.06.2011	Note Sheet of transfer committee recommending transfers alongwith seniority list
Ext.W16	23.06.2011	Order of transfer based on the transfer committee
Ext.W17	25.05.2012	Note Sheet of transfer committee recommending transfers alongwith seniority list
Ext.W18	30.05.2012	Order of transfer based on the transfer policy
Ext.W19	15.02.2013	Order of the Hon'ble High Court, Delhi in C.M. No. 1759/2013 in W.P. (C) No. 754/2013
Ext.W20	13.03.2013	Order of the Hon'ble High Court, Delhi in C.M. No. 1759/2013 in W.P. (C) No. 754/2013
Ext.W21	03.05.2013	Transfer Order by the Respondent
Ext.W22	14.05.2013	Representation made by one of the employee for retention at Hyderabad
Ext.W23	19.06.2013	Order of transfer issued by the Respondent
Ext.W24	07.10.2013	Order passed by the Assistant Labour Commissioner, Central declaring the protected workman
Ext.W25	31.12.2013	Order passed by the Assistant Labour Commissioner, Central declaring the protected workman
Ext.W26	22.09.2014	Order of transfer issued by the Respondent
Ext.W27	27.05.2015	Order of transfer issued by the Respondent

**On the Respondent's side**

Ext.No.	Date	Description
Ext.M1	16.02.2016	Letter of Authorization
Ext.M2	11.02.1992	Letter of Executive Director
Ext.M3	12.07.1994	Letter of the Director Personnel
Ext.M4	30.03.1995	Recognition of Union
Ext.M5	26.05.1997	Note Sheet
Ext.M6	08.02.2013	Grant of recognition to the Union
Ext.M7	25.02.2013	Grant of recognition to the Union
Ext.M8	12.08.1999	Corporate Head Quarters Letter
Ext.M9	27.11.2002	Corporate Head Quarters Letter
Ext.M10	23.05.2014	Policy for creation of Transfer Committee
Ext.M11	25.11.1999	Transfer Policy of AAI
Ext.M12	22.05.2015	Inter Office Note

नई दिल्ली, 31 अगस्त, 2016

**का.आ. 1879.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स इण्डियन रेयर अर्थ लिमिटेड एवं अन्य के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद

में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एरनाकुलम के पंचाट (संदर्भ सं. 25/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-29011/26/2008-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 31st August, 2016

**S.O. 1879.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2010) of the Central Government Industrial Tribunal/Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Indian Rare Earths Ltd. and others and their workman, which was received by the Central Government on 29.08.2016.

[No. L-29011/26/2008-IR (M)]

SAMIR KUMAR DAS, Under Secy.

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

**Present:** Shri. K. Sasidharan , B.Sc., LL.B, Presiding Officer

(Thursday the 23<sup>rd</sup> day of June, 2016/02<sup>nd</sup> Ashadha, 1938)

#### ID 25/2010

Unions/Workman

:

1. Shri B Baiju  
General Secretary  
IRE Mining Civil Workers Congress(INTUC)  
Vellanthuruthu  
Cheriazheekkal  
Post Karunagappally
2. Shri G P Sanil  
General Secretary  
IRE Mining Area Constructions& General Workers  
Union (AITUC), Vellanthuruthu  
Cheriazheekkal  
Post Karunagappally
3. Shri K Sarish  
General Secretary  
IRE Mining Workers Union  
Block IV Mining  
Vellanthuruthu, Cheriazheekkal PO  
Karunagappally, Kollam -690573
4. Shri Subhajan V  
Convener  
IRE Civil Forum Workers Union(BMS)  
Vellanthuruthu  
Cheriazheekkal  
Post Karunagappally
5. Shri K Vijayalal  
Secretary  
Karunagappally Taluk General Workers Union (UTUC),  
Vellanthuruthu  
Cheriazheekkal  
Post Karunagappally
6. Shri Rajesh  
General Secretary

		IRE Mining and Loading Workers Union Block IV Mining Vellanthuruthu, Cheriazheekkal PO Kollam -690573 Karunagappally
		7. Shri Solomon Netto Secretary, IRE Civil Workers Union(CITU) Vellanthuruthu Cheriazheekkal Post Karunagappally
		8. Shri Brijith. B. A. Thekke Thuppasseril Vellanthuruth, Cheriazheekkal PO Karunagappally, Kollam – 690573.  By Adv. Shri Ashok B. Shenoy (for Union Nos.1 to 7 and Workman at Sl. No.8)
Managements	:	1. The Head Indian Rare Earths Ltd., Chavara PO Distt. Kollam (Kerala) – 691583  By M/s.Menon & Pai
		2. The President M/s.IRE Mining Area Civil Contract Workers Welfare Forum C/o IRE Ltd., Chavara Kollam, Chavara (Kerala) – 691583
		3. The Secretary M/s.RE Mining Area Civil Contract Workers Welfare Forum C/o IRE Ltd., Chavara, Kollam Chavara (Kerala) – 691583  By Advs. Shri Paulson C Varghese & Shri Baby Joseph (for 2 <sup>nd</sup> & 3 <sup>rd</sup> managements)

This case coming up for final hearing on 20.05.2016 and this Tribunal-cum-Labour Court on 23.06.2016 passed the following:

### AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and of Section 10 of the Industrial Disputes Act, 1947 (Act 14 of 1947) the Central Government referred the industrial dispute for adjudication as per Order No.L-29011/26/2008-IR(M) dated 13.08.2010. Subsequently as per the judgment in WP(C) No.31399/2010(Y) dated 08.11.2010, the Hon'ble High Court of Kerala, Ernakulam directed the Union of India to rectify the mistakes in the reference order and issue amended notification. Subsequently Corrigendum dated 11/19.05.2011 was issued in accordance with the directions in the judgment in the Writ Petition. Accordingly the dispute referred for adjudication is:

“Whether the demand of the five Trade Unions functioning in the establishment for regularization of 170 mineral loading workers (List attached) in the mines of Indian Rare Earths Ltd. is legal and justified? If so, what relief the workers concerned are entitled to and from which date?”

2. Subsequently as per Corrigendum dated 25.06.2013 the Ministry of Labour & Employment made some modification in the Corrigendum dated 11/19.05.2011.
3. In this reference there are three parties in the array of the management and 8 parties in the array of unions/workman.
4. The General Secretary of union No.3 filed claim statement contending as follows:

The 170 workmen involved in this reference are employed under the first management – Indian Rare Earths Ltd. as mineral loading workers in “Mycaud” category in the mines in Block-IV of Chavara deposit, which is forming part of Vellanthuruthu Ward of Alappad Grama Panchayat and Ponmana ward of Panmana Grama Panchayat. The first

management employed 170 workmen for the loading of raw sand mined and collected from the mines aforesaid into the lorries for transportation to the plant of the first management situated at Chavara for processing.

5. The workmen involved in this reference are employed by the first management ever since 1999 in accordance with the terms of the agreement entered into between the first management and the trade unions wherein the workmen involved are members. Agreement was so entered into with the intervention of the Government officials. The first management provided employment to the workmen involved in this reference on the specific understanding that they will be given preference for employment in the vacancies that may arise under the first management. Ever since the date of employment in the year 1999 the workmen involved are continuously and regularly employed under the management. While continuing such employment many of the workers were either retired or transferred or shifted to the plant of the first management at Chavara. The work involved is of perennial nature and it is essential and absolutely necessary for the sustenance of the activities and operations of the first management. The workmen are continuously and uninterruptedly employed under the first management for more than 12 years. The first management has not so far regularized the workmen involved in this reference. The first management deprived the workmen all the wages legally due to them and the benefits payable under various labour enactments.

6. The first management created the second management forum/organization to make it appear that the workman involved are contract workers under the second management and thereby to deprive them all the legitimate dues and benefits payable to them under various labour enactments.

7. The second management forum/organization is a sham and non-existent organization created by the first management with the sole intention to defraud the workmen and to deny the benefit legally due to them under one pretext or other. The workmen involved in this reference are employed by the first management, the salary due to them is paid by the first management, the control, supervision and management of the workmen involved are done by the first management. As per the terms and conditions in the agreement entered into between the unions on the one hand and the first management on the other, the latter is bound to regularize the workmen as their permanent employees. The action of the first management in not regularizing the workmen amounts to unfair labour practice, which is prohibited under the provisions of the Industrial Disputes Act.

8. The workmen involved have no other source of livelihood except the income derived from the employment under the first management. Therefore union No.3 has requested to uphold their demands and claims; to regularize the employment of 170 workmen under the first management and to declare that they are entitled to all benefits payable to permanent workmen, with effect from the date of filing the charter of demand and grant all other benefits payable to permanent workmen.

9. Union Nos.1, 2 and 4 to 7 filed a statement adopting the contentions in the claim statement filed by union No.3. Party No.8 also filed statement adopting the contentions in the claim statement filed by the 3<sup>rd</sup> union.

10. The contentions in the written statement filed by the first management in brief are as follows:

The first management has denied all the averments in the claim statement filed by union No.3 except those that are specifically admitted. The persons involved in this reference are members of Indian Rare Earths Mining Area Civil Contract Workers Welfare Forum, which is a charitable society registered under the Travancore Cochin Literary Scientific and Charitable Societies (Registration) Act, 1955. They are not workmen under the first management. There is no master and servant relationship between the first management on the one hand and the 170 workmen involved in this reference on the other. The workmen involved in this reference will not come under the purview of Section 2(s) of the Industrial Disputes Act and the claim put forward by them will not constitute a dispute as defined under Section 2(k) of the Industrial Disputes Act.

11. Being the members of the Forum, the workmen involved are governed by the byelaws of the Forum. The trade unions and the workmen arrayed in this reference have no right to raise an industrial dispute and claim regularization under the first management. The workmen involved are brought by the terms and conditions in the periodical settlements entered into between the Forum, management and the unions.

12. The first management is a Government of India undertaking, under the administrative control of the Department of Atomic Energy. The first management has no right to make any appointments in violation of the provisions of the Constitution of India and the administrative guidelines issued by the Union of India from time to time. The permanent appointments under the first management are made against the vacancy, notified under the provisions of the Employment Exchange (compulsory notification of vacancies and as well as by advertisement in the media as per the requirements). Apart from this the first management is bound to follow the reservation policy of the Union of India. Since the workmen involved in this reference were never employed by the first management, they cannot seek regularization in service under the first management. The first management has requested to consider the validity of the reference as a preliminary point.

13. The first management is engaged in the mining and separation of minerals from the beach sand available in the coastal areas between Neendakara and Kayamkulam. The first management commenced the production in the year 1970. As part of production activities the first management is doing mining work at Vellanthuruthu Ward and Ponmana Ward. While so the people residing in that area raised several demands including employment under the first management. They began to obstruct the operations carried out by the first management which lead to law and order problem causing inconvenience to the first management. In the year 1992 the revenue authorities intervened in the matter and after detailed discussions and considering the representations of the local people an understanding was arrived at on 26.08.1993. As per that understanding it was decided to prepare a list of 50 persons from the locality for engaging them in construction works under the first management. It was further agreed that those persons will be given preference in the future vacancies under the first management. In pursuance of which the Welfare Forum was constituted in the year 1997, which is governed by the provisions of its byelaws. The Welfare Forum is managed by the governing body consisting of the representatives of IREL management and representatives of the trade unions. The service conditions of the members of Welfare Forum are regulated in accordance with the stipulations in the long term settlements between the Forum management and the unions who raised this dispute. The settlements were made on 05.04.2008, 03.11.2010 and 12.11.2010. Initially there were 55 members in the Forum nominated by CITU, INTUC, AITUC and UTUC unions. Later the strength of the members was increased to 69.

14. During the year 1999-2000 a new mining site was opened at Ponmana. While so the local residents raised objections and demanded employment. As a result the revenue authorities decided and necessitated to enroll 180 persons from Ponmana also as members of the Forum. The unions have accepted and approved the creation of Welfare Forum and during conciliation they agreed that no one will raise any claim for employment under the first management company.

15. At present the first management is having more than the strength of the manpower required for its operations. They are not in a position to provide employment to the dependents of the employees on compassionate grounds. The workmen involved in this reference were nominated by various trade unions and political parties. The contention of the union that the second management is a sham and nonexistent organization created with intent to defraud the workmen and deny them their benefit in accordance with the various labour enactments, is absolutely false. The first management has not committed any unfair labour practice under the provisions of the Industrial Disputes Act. The members of the Forum – the workmen involved are getting wages from the second management. Their service conditions are governed by the settlements entered into between the Forums and unions periodically. Therefore the first management has requested to uphold their contentions and disallow the claim of the workman.

16. Management Nos.2 and 3 filed written statement contending as follows:-

They have denied all the averments in the claim statement filed by the third union except those that are specifically admitted. The parties on whose behalf the Industrial Dispute is espoused are members of the 2<sup>nd</sup> & 3<sup>rd</sup> management, which is a charitable society registered under the Travancore Cochin Literary Scientific and Charitable Societies(Registration) Act, 1955. They are governed by the byelaws of the Forum and bound by its terms and conditions. The trade unions at whose instance the dispute is raised have no right to claim regularization of the workmen under the first management. The persons involved in this reference are bound to follow the terms and conditions in the periodical settlements entered into between the Forum and the unions.

17. The management is a Government of India undertaking under the administrative control of the Department of Atomic Energy. It is having two units in Kerala, one at Chavara in Kollam District and the other at Udyogamandal in Ernakulam District. The first management started production in the year 1970. As part of the production work the first management is doing mining work at Vellanthuruthu Ward of Alappad Panchayath and Ponmana Ward of Panmana Panchayath. While so local people raised several demands including employment under the first management. The first management was not in a position to consider the demand for employment from the local people as there was sufficient manpower to do the company's work. The local people began to obstruct the operations of the first management which led to law and order situation causing hardship and inconvenience to the first management. In the year 1993 the revenue authorities intervened and after detailed discussion with the representatives of local people an understanding was arrived at on 26.08.1993. As per the understanding a list of 50 persons from the locality was to be prepared and they have to be engaged for the construction works under the first management. It was further agreed that those persons will be given preference in future vacancies under the first management. In pursuance of the above, the Welfare Forum was formed in the year 1997, under the provisions of the Travancore Cochin Literary Scientific Charitable Societies(Registration) Act, 1955. The Welfare Forum is managed by a governing body consisting of the representatives of IREL management and the representatives of the trade unions. This arrangement was made for the welfare and well being of workers who are engaged for civil miscellaneous works. At the time of formation of the Forum there were 55 members nominated by the CITU, INTUC, AITUC and UTUC unions. In fact the first management never required the services of these 55 persons. The unions who participated in the discussion convinced and accepted creation of welfare forum and agreed not to raise any claim for employment under the first management

company. The intention of the parties who attended the discussions before the District Collector on 26.08.1993 was to resolve the issue and to avoid any law and order problems.

18. Subsequently a similar situation arose and at the intervention of the Revenue Divisional Officer, Kollam 14 more persons were enrolled as member of the Forum. During the year 1999-2000, a new mining site was opened at Ponmana. At that time there was claim by the local people for employment which turned out to agitations and it caused difficulty for the management to proceed with the mining activities smoothly. At that time the revenue authorities intervened and it was necessitated to enroll 170 persons from Ponmana area as members of the Forum.

19. The contention of the union that the persons involved in this reference are employed by the first management in accordance with the terms of the agreement dated 26.08.1993, is incorrect. It is incorrect to say that these persons were selected by the first management. The workmen involved in this reference were never employed under the first management. The contention of the union that the Forum is a sham and nominal one, is false and incorrect. The Forum is governed by its byelaws and Rules & Regulations. The unions are not entitled to any of the relief as per the claim statement.

20. An identical issue has already been adjudicated by this Tribunal and an award is passed in ID 158/2006 rejecting the claim for regularization by the unions. Therefore, management Nos.2 and 3 have requested to uphold their contentions and disallow the claim put forward by the unions.

21. After filing written statement by management Nos.1 to 3, union No.3 filed replication reiterating the contentions in the claim statement. Union No.3 has stated that as per the Award in ID 158/2006 this Tribunal found that the workmen involved therein are workmen under the first management. Further this Tribunal directed the first management to consider whether they can be regularized by invoking the observations in the decision of the Apex Court in Umadevi's case.

22. After affording sufficient opportunity to the parties to take steps and produce documents, the matter was posted for evidence. On behalf of the union WW1 was examined and Exts.W1 to W17 are the documents marked. On behalf of the management MW1 and MW2 were examined. Exts.M1 to M11 are the documents marked on their behalf. Heard both sides.

23. The points arising for consideration are:

- “(i) **Whether the 170 employees involved in this reference are Employees under the 2<sup>nd</sup> and 3<sup>rd</sup> management Forum?**
- (ii) **Whether the 170 workmen involved in this reference are employed by the first management?**
- (iii) **Whether the workmen involved in this reference are entitled for regularization of their service in the mines of the first management?**
- (iv) **What relief the workmen are entitled and from which date?”**

24. Point Nos.(i) & (ii):- As per the Corrigendum dated 11/19.05.2011 issued by the Ministry of Labour, the dispute referred for adjudication by this Tribunal is:

***“Whether the demand of the five Trade Unions functioning in the establishment for regularization of 170 mineral loading workers (List attached) in the mines of Indian Rare Earths Ltd. is legal and justified? If so, what relief the workers concerned are entitled to and from which date?”***

25. The first management is a Government of India undertaking under the administrative control of the Department of Atomic Energy. The first management is having two units in the State of Kerala one at Chavara in Kollam District and another at Udyogamandal at Ernakulam District. The first management is engaged in mining and separation of minerals from the beach sand available in the coastal areas between Neendakara and Kayamkulam. The first management started production in the year 1970. As part of the production activities the first management is doing mining work at Vellananthuruthu Ward of Alappad Panchayath and Ponmana Ward of Panmana Panchayath. While so the local people in and around that area raised demands including employment under the first management. It is stated that the first management was not in a position to consider or accept the demand for employment from the local people. Subsequently law and order situation arose and the revenue authorities intervened in the matter. It is stated that after detailed discussion with the representatives of the local people an understanding was arrived at and on the basis of which a settlement was entered into on 26.08.1993. Subsequently a Welfare Forum was formed in the year 1997 as agreed between the parties and the terms and conditions of employment are in accordance with the byelaws of the Forum. It is stated that there was settlements on 05.04.2008, 03.11.2010 and 12.11.2010 and the persons involved are governed by the terms and conditions of the settlements.

26. The management has stated that during the year 1999-2000, a new mining site was opened at Ponmana and at that time the local people raised the claim for employment. At the intervention of the revenue authorities 180 persons were enrolled from Ponmana area as members of the Forum. The first management has stated that the workmen involved were not directly employed by them for the mining work. It is stated that as per the terms of settlement, the Forum is disbursing wages and other emoluments to the workers and that the workers are governed by the byelaw of the Forum. The first management has denied the employer-employee relationship between them on the one hand and the workmen involved herein on the other. According to the first management they never employed the workmen involved directly for the various activities as stated in the claim statement.

27. The third union has disputed the claim of the first management. According to the third union the workmen involved were directly employed by the first management and that they are entitled for regularization of service under first management. Union No.3 has further stated that management Nos.2 and 3 are formed as a sham and nominal entity; created with intent to deny the workmen their legitimate right for regularization of service under the first management. It is stated that the workmen involved are entitled to be regularized in service in the first management with all service benefits.

28. While examined as WW1, the General Secretary of union No.3 has stated that he is not a member of the second management Forum. He has stated that the other workmen involved in this reference are also not members of the second management Forum. WW1 has admitted that Ext.W13 is copy of the Award passed in relation to the workmen who are similarly placed. WW1 has stated that there is no document to prove that IREL has issued an order appointing him as a workman under them. He has stated that there is no document to prove that the first management is paying salary to him. WW1 has stated that Ext.W6 is the document issued to the member No.53. WW1 has further stated that he received a card of similar type in which his number is written as 167. WW1 has denied the suggestion that it was the second management who is paying their wages.

29. While examined as MW1, the Senior Manager, MIS, IRE Ltd. has stated that he is employed under the first management. He has stated that the service conditions and the payment of salary and other aspects relating to the mining workers are handled by the HR department. He has further stated that he was not directly involved in any of the matters relating to the workmen involved in this reference. MW1 has stated that the office bearers of the Forum are the officials working in the first management. MW1 has stated that the administrative control and management of the Forum are done by the Director Board. He has further stated that the members of the Director Board are elected by the General Body. He has stated that he had no knowledge as to how many workmen are working in the mines of the first management. MW1 has stated that manpower assessment and employees' strength are decided by the HR department of the first management. MW1 has further stated that the salary for the workmen involved in this reference is paid through bank. He has stated that he has no knowledge as to whether there was any agreement entered into between the first management and the second management. MW1 has denied the suggestion that the second management is a sham and a nominal entity.

30. While examined as MW2, the Senior Officer, HRO of the first management has stated that he is working under the first management. He has stated that there are no other office bearers for the second management. MW2 has stated that the second management has no registration or license under the Contract Labour Regulation. He has denied the suggestion that Ext.M1 document was created at the instance of the first management. MW2 has stated that the five persons signed as representatives of the Forum management are employees under the first management. MW2 has denied the suggestion that the second management is only a nominal entity created by the first management.

31. On going through the documents produced on either side and the oral evidence adduced in this case, it can be seen that the second and third management Forum were constituted by the first management so as to enable the smooth functioning of the first management company. In Ext.W13 award there is a finding to the effect that the workmen involved in that case are casual workers under the first management. The evidence adduced in this case also probalises the fact that the workmen involved in this reference also are casual labourers under the first management. In Ext.W13 this Tribunal has observed that in view of the judgment in Umadevi's case the possibility for providing employment to the workmen has to be explored in the light of the observations in that judgment. Admittedly the workmen involved are casual labourers engaged temporarily for the loading and unloading of sand – which is the raw material required for the functioning of the first management company. The first management company is an establishment under the administrative control of the Depart of Atomic Energy. The workmen involved herein cannot claim any legal right to regularize their service under the first management especially for the reason that they were engaged as casual labourers for the civil contract work, without following the due procedure for appointment. In such circumstance their claim for permanency cannot be upheld in the eye of law. Therefore, the points for consideration are answered against the union.

32. Point Nos.(iii) & (iv):- In view of the finding on point Nos.(i) & (ii) the workmen involved are not entitled to the relief as per the reference order. Points are answered accordingly.

33. In the result an award is passed holding that the workmen involved in this reference are not entitled to any of the relief as per the reference order.

The award will come into force one month after its publication in the Official Gazette.

Dictated to the Personal Assistant, transcribed and typed by her, corrected and passed by me on this the 23<sup>rd</sup> day of June, 2016.

SASIDHARAN K., Presiding Officer

#### **APPENDIX**

##### **Witness for the 3<sup>rd</sup> union**

WW1                      Shri K. Sarish                      11.08.2014

##### **Witness for the first management**

MW1                      Shri K. Sunil Kumar                      20.10.2014

##### **Witness for the second and third managements**

MW2                      Shri Sunil Sebastian                      15.01.2014

##### **Exhibits for the union No.3**

- W1        -        Reference for Hospitalisation/Consultation form bearing Case file No.266/M-258/AMH/DGM/14 dated 29.04.2014 issued by the General Manager(Medical), IRE Loading, Civil, Mining Area, Ponmana to the Medical Officer, AM Hospital, Karunagappally.
- W2        -        Reference for Hospitalisation/Consultation form bearing Case file No.265/M-272/P/DGM/14 dated 29.04.2014 issued by the General Manager(Medical), IRE Loading, Civil, Mining Area, Ponmana to the Medical Officer, Pearl Hospital, Karunagappally.
- W3        -        Enquiry Notice No.001285 dated 02.07.2013 issued by the Enquiry Officer, SM(Resources), Indian Rare Earths Limited, Chavara to Shri R. Rajesh, member No.272.
- W4        -        Authorisation letter No.CH/MNG/VT/DGMS dated 23.04.2014 issued by the Mines Manager, Vellanathuruthu Ilmenite Mine, Indian Rare Earths Limited, Chavara to Shri N. Sygal, member No.220.
- W5        -        Authorisation letter No.CH/MNG/VT/DGMS dated 23.04.2014 issued by the Mines Manager, Vellanathuruthu Ilmenite Mine, Indian Rare Earths Limited, Chavara to Shri N. Sygal, member No.220.
- W6        -        Authorisation letter No.CH/INMIN/VT/01 dated 16.11.2013 issued by the Mines Manager, Vellanathuruthu Ilmenite Mine, Indian Rare Earths Limited, Chavara to Shri T. Sunil Raj, member No.53.
- W7        -        Letter No.MACCWWF/2009 dated 27.06.2009 issued by the Head of the first management to Shri D. Jayapalan, President, JTUC, Ponmana, Chavara.
- W8        -        Letter No.CH/HRM/VT Mining/2011 dated 17.11.2011 issued by the Chief General Manager of the first management to Shri D. Jayapalan, President, JTUC, Ponmana, Chavara.
- W9        -        Letter No.MACCWWF/2009 dated 23.06.2009 issued by the Head of the first management to Shri D. Jayapalan, President, JTUC, Ponmana, Chavara.
- W10       -        NOTICE bearing No.CH/HRM/Mining Forum/2012 dated 26.07.2012 issued by the Head of the first management to Shri C. Syam Sunder, President, IRE Mining & Loading Workers Union(STU), Vellanathuruthu.
- W11       -        Letter No.CH/HRM/Mining/2011 dated 12.10.2011 issued by the Head of the first management to Shri D. Jayapalan, President, JTUC, Ponmana P.O., Chavara.
- W12       -        NOTICE bearing No.CH/HRM/TRG/2010 dated 28.07.2010 issued by the Senior Manager(HRM) of the first management.
- W13       -        True copy of Award in ID 158/2006 dated 04.06.2010 passed by the Central Govt. Industrial Tribunal-cum-Labour Court, Ernakulam.



- W14 - Copy of the minutes of the meeting held on 06.12.2011 in the presence of the Hon'ble Chief Minister and Hon'ble Union Minister of State for Industries and Labour by the first management.
- W15 - True copy of the minutes of the meeting held on 02.07.2013 at Kollam Collectorate Conference Hall before the District Collector between the first management and the representatives of different Trade Unions.
- W16 - True copy of the letter No.8/(IRE/Chavara-(VIP)/2012/B.1 dated 23.01.2014 issued by the Regional Labour Commissioner(Central), Office of the Regional Labour Commissioner(Central), Cochin to the General Secretary, IRE Mining & Loading Workers Union, Vellanathuruth, Cheriazheekal PO., Karunagappally – 690573.
- W17 - True copy of the letter No.CH/HRM/IR/ALC/2014 dated 24.01.2014 issued to the Asst. Labour Commissioner (Central), Ramanilayam, T.C. No.25/3453, Uppalam Road, Thiruvananthapuram – 695001 by the first management.

#### **Exhibits for the first management**

- M1 - True copy of the Byelaws of the IRE Mining Area Civil Contract Workers Welfare Forum.
- M2 - True copy of the settlement dated 12.11.2010 arrived at between the Forum management and representatives of different Trade Unions representing the members of the Forum under Section 12(3) of the Industrial Disputes Act, 1947.
- M3 - True copy of the minutes of the meeting held on 26.08.1993 before the District Collector, Kollam.
- M4 - True copy of the minutes of the meeting held on 23.07.1999 between the members of the IRE Mining Area Civil Contract Workers Welfare Forum and the representatives of Trade Unions in the Forum.
- M5 - True copy of the minutes of the meeting held on 15.09.1999 with the members of Shree Sugunanda Vilasom Karayogam by the first management.
- M6 - True copy of the minutes of the meeting held on 02.03.2000 convened by RDO, Kollam with the representatives of the trade unions and the first management.
- M7 - True copy of the minutes of the meeting held on 19.08.2000 convened by the first management.
- M8 - True copy of the minutes of the meeting held on 13.11.2000 between the representatives of the first management, representatives of the civil contract workers and the raw sand loading/transporting contractor
- M9 - True copy of the minutes of the meeting held on 15.01.2002 convened by Shri K. Rajendran Nair, President.

#### **Exhibits for the Second Management**

- M10 - True copy of the Byelaws of the IRE Mining Area Civil Contract Workers Welfare Forum.
- M11 - True copy of the settlement dated 12.11.2010 arrived at between the Forum management and representatives of different Trade Unions representing the members of the Forum under Section 12(3) of the Industrial Disputes Act, 1947.

#### **IRE MINING AREA CIVIL CONTRACT WORKERS WELFARE FORUM (Jr. Members) PONMANA MINING SITE**

Sl. No.	Member No.	Member Name
1	230	Shyam Kumar S
2	118	Jawaharlal S
3	261	Manesh Mohan
4	269	Sajith R
5	284	Shaiju J
6	291	Harish B
7	155	Manoj V
8	163	Sunil Kumar B
9	116	Brijith B A
10	124	Rajesh R

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11	140	Prem Kumar T P
12	144	Pramod O
13	146	Ratheesh R
14	154	Sunil S
15	156	Thushar Kapoor
16	161	Jayan J
17	187	Syam A
18	202	Sajith Reni.G
19	214	Biju G
20	236	Santhosh R
21	259	Rethnadas R
22	274	Ullas R
23	134	Thrithilal P
24	145	Shiji A
25	211	Bineesh D
26	223	Sanil Kumar
27	227	Liju S
28	283	Binu V
29	126	Shaji S
30	137	Subhash K
31	147	Nishanth B
32	216	Rajesh R
33	225	Sunil R
34	241	Ullas Raj B
35	268	Pramod T
36	279	Anil Kumar C
37	282	Ajith C
38	190	Santhosh S
39	204	Sreekumar G
40	272	Rajesh R
41	276	Binu V
42	280	Sreelal C
43	115	Maneesh R
44	135	Sabu S
45	175	Biju C
46	193	Rajesh R
47	200	Anil Kumar K
48	231	Vinod V
49	271	Santhosh C
50	287	Amritharaj V
51	289	Biju K
52	127	Suresh S
53	158	Praveen K
54	166	Lali S
55	171	Manilal P
56	189	Sajesh Kumar S
57	203	Shibu C
58	278	Manas I

59	153	Anil A
60	167	Sarish K
61	178	Subhash S
62	201	Anil R
63	205	Prasad V
64	222	Raju A
65	246	Santhosh Kumar S
66	251	Sudheesh Kumar S
67	258	Vinod.J
68	263	Ambilikuttan G
69	290	Omanadas R
70	128	Ajayakumar T
71	138	Hareendra Sarma P
72	152	Yogidas G
73	199	Sasi Kumar S
74	215	Pushparajan P
75	224	Bensilal R
76	235	Satheesh S
77	237	Sunil S
78	266	Sanu T
79	123	Manikuttan K
80	141	Santhosh T V
81	160	Murukan D
82	164	Biju T
83	188	Sunil Kumar J
84	212	Shaji S
85	233	Vinaya Kumar R
86	245	Anil Kumar A
87	262	Biju D
88	132	Viswanand V
89	191	Suresh K
90	197	Sreelal D
91	220	Sygal N
92	253	Raji Vishnudas
93	129	Sabu T
94	151	Babu B
95	194	Jayapalan D
96	255	Saji C
97	121	Subhprasad D
98	133	Rajesh B
99	168	Suresh S
100	256	Sudhi S
101	120	Manilal P
102	122	Saji Kumar S
103	169	Dinajan G
104	226	Krishnanlal B
105	250	Sebastian G

106	157	Sarasan P
107	177	Subhashchandran K
108	183	Sathyarajan D
109	195	Sasi Kumar D
110	206	Vigendran B
111	207	Omanakuttan B
112	229	Anil Kumar.S
113	249	Anrudhan A
114	254	Suresh Kumar S
115	257	Omanadas K
116	270	Sisupalan B
117	288	Leela Krishnan.C
118	119	Viswanadhan.T
119	172	Sajeev D
120	184	Ramesan K
121	213	Satheesan G
122	217	Chithan S
123	148	Chithrasagar L
124	149	Manikuttan K
125	181	Thulaseedharan V
126	186	Vijayan V
127	208	Rajoo S
128	210	Rajendran P
129	228	Mohanadas B
130	232	Soori D
131	131	Moni G
132	218	Chandrabhanu V
133	264	Madhu T
134	117	Rajendran P
135	130	Soman K
136	159	Chithiran G
137	260	Unnikrishnan V
138	267	Prasanna Kumar V
139	142	Shaji E
140	143	Rajeevan B
141	150	Mohanadas B
142	179	Babu P
143	281	Rajeevan S
144	242	Dinakaran B
145	244	Satheesan N
146	139	Sukesan G
147	176	Radhakrishnan K
148	238	Asokan S
149	174	Prasannan G
150	247	Dineesan A
151	196	Sivanandan V
152	180	Vinayachandran A
153	198	Prakasan B

154	209	Vivekanandan.K
155	219	Jayasooriyan N
156	239	Rengan K
157	240	Ravi A
158	252	Peethambaran K
159	277	Devarajan S
160	162	Muraleedharan K
161	192	Asokan D
162	273	Raju E
163	170	Sarathchandran S
164	173	Vasudevan A
165	243	Rajagopalan S
166	248	Gopalakrishnan V
167	165	J Jagadeesh
168	182	C Manu
169	185	NAjay Kumar
170	265	S Vijayan

नई दिल्ली, 31 अगस्त, 2016

**का.आ. 1880.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स नोमुदीन आयरन ओर माईन्स के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ सं. 71/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-26012/2/2000-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 31st August, 2016

**S.O. 1880.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 71/2000) of the Central Government Industrial Tribunal/Labour Court-2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Noamundi Iron Ore Mines and their workman, which was received by the Central Government on 29.08.2016.

[No. L-26012/2/2000-IR (M)]

SAMIR KUMAR DAS, Under Secy.

## ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

**PRESENT :** Shri R.K. Saran, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act, 1947

### REFERENCE NO. 71 OF 2000

**PARTIES** : The Asstt. Secretary,  
Noamundi Mazdoor Union,  
P.O. Noamundi Bazar  
Distt: Singhbhum (W) (Jharkhand)

**Vs.**

The General Manager,  
Noamundi Iron Ore Mines,  
P.O. Noamundi Bazar,  
Distt: Singhbhum (W) (Jharkhand).

Order No. L-26012/2/2000-IR(M) dt. 12.07.2000

#### APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr.D.K.Verma, Ld.Advocate

State : Jharkhand

Industry : Mines

Dated, Dhanbad, the 20<sup>th</sup> June, 2016.

#### AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-26012/2/2000-IR (M) dt. 12.07.2000.

#### SCHEDULE

“Whether the action of the Management of Noamundi Iron Ore Mine in denying employment on compassionate ground to the dependant son of Shri Nageshwar Tiriya is justified? If not, to what relief his son Shri Mukhesh Tiriya is entitled?”

2. Neither the workman nor the Representative of the workman appeared on date nor did even produce long awaited workman-witness to move further in the matter of hearings despite giving the last chance. A through glance over the file reveals the adjournments on several occasions on the issue of evidence of the workman. Though more than three Notices had been sent to the Union on its address referred in the Order of Reference itself apart from one Show Cause Notice but to no avail. Whereas as against it, the O.P./Management side Mr. D.K. Verma, Ld. Advocate shows his presence not for this time but almost all along since inception. The case is related to employment of the workman on compassionate ground.

On perusal of the case record, it stands prima facie apparently clear that the Union or the petitioner has all along lost interest to contest the case on merits, or ever tried to push it to finality through adjudication. As the real issue, as of now, seems to have been lost its relevancy and no longer in existence between the parties. The case hovers over one issue of evidence of the workman since 07.01.2004 despite having been provided sufficient opportunity. So it is of no use dragging it indefinitely on the one issue for a prolonged period rather it should be closed in the natural interest and wider prospect. So the case is closed as ‘No Dispute Award’. Accordingly an Award is passed.

R. K. SARAN, Presiding Officer

नई दिल्ली, 31 अगस्त, 2016

**का.आ. 1881.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स सैटेलाइट सीएनजी सर्विसेज प्रा. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ सं. 143/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-30012/6/2015-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 31st August, 2016

**S.O. 1881.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 143/2015) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Satellite CNG Services Pvt. Ltd. and their workman, which was received by the Central Government on 29.08.2016.

[No. L-30012/6/2015-IR (M)]

SAMIR KUMAR DAS, Under Secy.

## ANNEXURE

## IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DELHI

ID No. 143/2015

Shri Rajnath, S/o Shri Ram Chander Sah,  
Through Bhartiya Engineering & General Mazdoor Union,  
Bharat Mill Charkhi Gate, Plot No.1,  
Near D Block, Karampura,  
New Delhi 110 015

...Workman

## Versus

M/s Satellite CNG Services Pvt. Ltd.,  
45, Community Centre, 1<sup>st</sup> Floor,  
Narayana Industrial Area Phase I,  
New Delhi

...Management

## AWARD

Central Government, vide letter No.L-30012/6/2015-IR(M) dated 03.06.2015, referred the following industrial dispute to this Tribunal for adjudication:

“Whether non-providing of job to the workman Shri Rajnath S/o Shri Ram Chander Sah by the management of Satellite CNG Services Pvt. Ltd. after 01.08.2014 may be construed as termination of services in violation of Section 25F & 25G of Industrial Disputes Act, 1947? If not, what relief the workman concerned is entitled to?”

2. In the reference order, the appropriate Government commanded the party raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite party/ies involved in the dispute. Despite directions so given, Shri Rajnath opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the management. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : August 23, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 31 अगस्त, 2016

**का.आ. 1882.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स एम. एम.टी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, नई दिल्ली के पंचाट (संदर्भ सं. 90/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-29012/12/2016-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 31st August, 2016

**S.O. 1882.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 90/2015) of the Central Government Industrial Tribunal/Labour Court-1, New Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the

management of M/s. MMTC Ltd. and others and their workman, which was received by the Central Government on 29.08.2016.

[No. L-29012/12/2016-IR (M)]

SAMIR KUMAR DAS, Under Secy.

### ANNEXURE

### IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO.1, DELHI

ID No. 90/2015

Shri Ramesh Chand, S/o Shri Ram Das,  
R/o 1222, L Block, Gali No.26, Sangam Vihar,  
New Delhi 110 002

...Workman

### Versus

1. The Director,  
MMTC Ltd. Scope Complex,  
Lodhi Road, New Delhi 110 003
2. The Manager,  
MMTC Co-operative Canteen Society Ltd.  
Bahadur Shah Zafar Marg,  
New Delhi 110002
3. The President,  
MMTC Co-operative Canteen Society,  
C/o MMTC Ltd., Jhandewalan,  
Jewelry Complex, Rani Jhansi Road,  
New Delhi 110 002

...Managements

### AWARD

Central Government, vide letter No.L-29012/12/2016-IR(M) dated 24.02.2016, referred the following industrial dispute to this Tribunal for adjudication:

“Whether retirement of Shri Ramesh Chand with effect from January 2013 by the management of MMTC Co-operative Canteen Society Ltd. can be construed as termination of service without complying with provision of Industrial Disputes Act? If not, what relief the workman concerned can be given?”

2. In the reference order, the appropriate Government commanded the party raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite party/ies involved in the dispute. Despite directions so given, Shri Ramesh Chand opted not to file his claim statement with the Tribunal.

3. On receipt of the above reference, notice was sent to the workman as well as the management. Neither the postal article, referred above, was received back nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the claimant. Despite service of the notice, claimant opted to abstain away from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a ‘No Dispute/Claim’ award. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : August 23, 2016

A.C. DOGRA, Presiding Officer

नई दिल्ली, 31 अगस्त, 2016

**का.आ. 1883.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में



केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1310/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-30012/77/2000-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 31st August, 2016

**S.O. 1883.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1310/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ONGC Ltd. and others and their workman, which was received by the Central Government on 29.08.2016.

[No. L-30012/77/2000-IR (M)]

SAMIR KUMAR DAS, Under Secy.

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad,  
Dated 25<sup>th</sup> July, 2016

##### Reference: (CGITA) No. 1310/2004

1. The Group General Manager (P),  
ONGC Ltd.,  
Hazira Project, P.O. Bhatpore,  
Surat (Gujarat) – 394518.
2. M/s Sagar Construction,  
Near Tapi Bridge, Tax Plaza, Kagdaila ONGC Road,  
Surat (Gujarat) – 394518

...First Party

##### V/s

Shri Dharmendra P. Patel,  
At. Bhatpur,  
Taluka Choryasi, Surat (Gujarat)

...Second Party

For the First Party : None

For the Second Party : None

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/77/2000-IR (M) dated 05.07.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the contract between the management of ONGC Ltd., Surat and the Contractor M/s Sagar Construction in respect of the contractual workman Shri Dharmendra P. Patel is sham & bogus contract?

“Whether the demand of the workman Shri Dharmendra P. Patel for treating/declaring him as direct and regular/permanent employee of ONGC Ltd or from the date of notification issued by Government of India, prohibiting his alleged employment/work through the contract system is legal and justified? If so, to what relief Shri Dharmendra P. Patel is entitled and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 05.07.2000. Both the parties submitted their statement of claim Ext. 3 on 24.10.2000 and written statement Ext. 7 on 10.04.2001 respectively. Reference was listed for evidence of the second party but on 30.06.2016, only workman involved in the reference Shri Dharmendra P. Patel, moved an application Ext. 23 for withdrawal from the reference. Therefore, on 30.06.2016 the name of the aforesaid workman was deleted from the reference. He was the only workman involved in the reference. Therefore, no further action was required in the reference.

2. Hence, the reference is finally disposed of as withdrawn.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 अगस्त, 2016

**का.आ. 1884.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबंध निर्यातकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1322/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-30012/70/2000-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 31st August, 2016

**S.O. 1884.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1322/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ONGC Ltd. and others and their workman, which was received by the Central Government on 29.08.2016.

[No. L-30012/70/2000-IR (M)]

SAMIR KUMAR DAS, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad,  
Dated 27<sup>th</sup> July, 2016

##### Reference: (CGITA) No. 1322/2004

1. The Group General Manager (P),  
ONGC Ltd.,  
Hazira Project, P.O. Bhatpore,  
Surat (Gujarat) – 394518.
2. M/s Sagar Construction,  
Near Tapi Bridge, Tax Plaza, Kagdaila ONGC Road,  
Surat (Gujarat) – 394518

...First Party

##### V/s

Shri Hitendra J. Patel,  
At. Bhatpur,  
Taluka Choryasi, Surat (Gujarat)

...Second Party

For the First Party : None

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30012/70/2000-IR (M) dated 05.07.2000 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the contract between the management of ONGC Ltd., Surat and the Contractor M/s. Sagar Construction in respect of the contractual workman ShriHitendra J. Patel is sham & bogus contract?”

“Whether the demand of the workman ShriHitendra J. Patel for treating/declaring him as direct and regular/permanent employee of ONGC Ltd or from the date of notification issued by Government of India, prohibiting his alleged employment/work through the contract system is legal and justified? If so, to what relief ShriHitendra J. Patel is entitled and from which date and what other directions are necessary in the matter?”

1. The reference dates back to 05.07.2000. The second party submitted the statement of claim Ext. 4 on 24.10.2000 and first party submitted the written statement Ext. 9 on 10.04.2001. The reference was listed for evidence but on 19.07.2016 only workman involved in the reference Hitendra J. Patel moved an application Ext. 27 for withdraw and deleting his name from the reference. Same was allowed on 19.07.2016.

2. Thus, the reference is dismissed as withdrawn.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 अगस्त, 2016

**का.आ. 1885.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स परिश्रम लेबर को-ओपरेटिव सोसाइटी/ओ.एन.जी.सी. लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 312/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-30025/3/2016-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 31st August, 2016

**S.O. 1885.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 312/2004) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. Parishram Labour Co. Operative Society/ONGC Ltd. and their workman, which was received by the Central Government on 29.08.2016.

[No. L-30025/3/2016-IR (M)]

SAMIR KUMAR DAS, Under Secy.

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-cum-Labour Court,  
Ahmedabad,  
Dated 25<sup>th</sup> July, 2016

**Reference: (CGITA) No. 312/2004**

**[Old Complaint (ITC) No. 15/98]**

Shri Suresh B. Parmar,  
Peon Contract,  
C/o Gujarat Petroleum Employees Union,  
434/46, Gandhivas, Koba Road,  
Sabarmati, Ahmedabad – 5

...Complainant

V/s

1. Parishram Labour Co. Operative Society,  
19, Sahajanand Shopping Centre,  
Shahibuag, Ahmedabad – 4
2. The Group General Manager (Projects),  
ONGC Ltd., Ahmedabad,  
AvaniBhavan, 5<sup>th</sup> Floor,  
Sabarmati, Ahmedabad

...Opponents

For the Complainant : Shri G.K. Parmar  
 For the Opponent No. 1 : Absent  
 For the Opponent No. 2 : Sh. K.V. Gadhia & M.K. Patel Advocates-

**AWARD**

1. The complainant moved a complaint under section 33 A of the Industrial Disputes Act, 1949 in Reference (CGIT-A) no.48 of 2004, old Reference (ITC) No. 11/97 praying mainly as under:

“1. It is respectfully prayed that the Honourable Industrial Tribunal may kindly hold that the service of the complainant was terminated from 16.06.1997 to 20.08.1997 and from 1.08.1998 is in contravention of section 33 of Industrial Disputes Act and is illegal and prayed for reinstatement on his original post.

2. Any other relief, if any may be granted.”

2. The complainant in his complaint alleged that he was employed and had been serving as a peon in the establishment of Opposite Party no.2 under a contract with Opposite Party no.1. He is one of the workman involved in the pending aforesaid Reference (CGIT-A) no.48 of 2004, old Reference (ITC) No. 11/97praying for absorption of their services as the regular employee of Oil and Natural Gas Commission, herein after referred to as, ONGC. His (complainant) name appears therein the list annexed with the Reference at serial no.39. He has enclosed the Terms of Reference as annexure-A with the complaint. He had been working as peon in the office of Opposite Party No.2 in accounts section of ONGC office situated at AwaniBhawan, Ahmedabad. He also alleged that he had earlier worked as Helper Khalashi in the workshop of ONGC from 1996. He further alleged that he earlier objected to the change of his cadre, therefore his services were terminated on 16.06.1997 but later he was taken back and reemployed on 21.08.1997 and was posted at R-2 Rig. He further alleged that that the Opposite Party no.1, ONGC employed new workforce. He had worked on R-2 Rig from 21.07.1997 to 31.07.1998 but his services were abruptly terminated without following the due procedure of law. Therefore he prayed for reinstatement of his services by Opposite Party No. 2 and Opposite Part. No.1, ONGC on his original post with immediate effect without change of cadre with all the back wages from 01.06.1997 to 15.06.1997 and also back wages for illegal termination of his services from 16.09.1997 to 20.08.1997 and thereafter from 01.08.1997 till the reinstatement. In short, he has prayed for reinstatement of his service with back wages on his original post without changing his cadre.

2. Both the Opposite parties no.1 and 2 were served through registered post but Opposite party no.1 did not prefer to appear and file his reply cum written statement. Therefore my predecessor Sri B.K.Sinha proceeded ex parte against him, though he did not pass any specific order.

3. Opposite party no.2 The Group General Manager (Projects), ONGC Ltd., Ahmedabad appeared through solicitor firm named, K.V.Gadhia Associates and submitted his written statement vide Ext. 10 wherein Opposite party no.2 denied all the averments and contentions made in the complaint and submitted that ONGC has not violated any provisions of section 33 of the Industrial Disputes Act, Therefore complaint is not legally maintainable. It has been also stated that the complainant was the employee of the opposite party no.1 M/s Parishram Labour Co-operative Society, hereinafter referred to as Society. Complainant was employed and posted at TBG Workshop of ONGC till May, 1997 and, thereafter he was shifted outside the TBG Workshop by the Society on 23.06.1997. The letter of posting was annexed with the written statement filed by the Opposite party no.2, the ONGC. The said letter reveals that the complainant was shifted/ posted at R2 Rig with effect from 23.06.1997 but the complainant did not report on the same day i.e.23.06 1997 and reported at R2 Rig on 01.09.1997. It is further submitted that opposite party no.1 Society informed the ONGC vide letter dated 15.08.1998 annexed with the written statement that Complainant had not been reporting for duties since 01.08.1998, therefore wages were not paid to him by Opposite party no.1 Societyaccordingly. It has been further submitted that admittedly the Complainant was the employee of opposite party no.1 Society; therefore, there was no master-servant relationship between workman/Complainant and opposite party no.2 ONGC. Thus the complaint is not maintainable and deserves to be dismissed against opposite party no.2 ONGC. It is further submittedthat ONGC, opposite party no.2 has not violated any provisions of law including the provisions of the Industrial Disputes Act, therefore complaint be dismissed as not maintainable under law.

4. The Complainant examined himself as his witness which is Ex-5 and stated on oath that he had been working at TBG section of ONGC as peon since 1. 11.1996 and was transferred to Mechanical workshop of ONGC in the year 1997. He reported there where he was assigned the work of Khalasi. He objected to it. Consequent to his objection his services were terminated on 06.07.1997. He further stated on oath that he was reinstated on 04.12.1998.1998 and posted Rig 2 where he was assigned the work of Khalasi and again was terminated on 01.08.1998. But at the time of termination of service, neither any notice nor was any compensation paid to him. He further stated on oath he moved the industrial dispute through his Union wherein Department of labour and Employment, Government of India referred the dispute to the Industrial Tribunal for adjudication as Reference (ITC) no.- 11 of 1997 for knowing as to whether the services of such contract labourers ought to be regularised wherein he was listed at serial no.39. He further stated on oath that since the termination of his services he is unemployed. He has further stated that he has filed the complaint or reinstatement as regular employee of ONGC as peon.

5. First Party no.2 ONGC examined one of his officials Dhirubhai Maganlal Parmar. He is his affidavit/ examination in chief Ext. 5 stated on oath that he has been working in the Department of Civil since last 25 years. Parishram Labour Co-operative Society entered into a contract with ONGC commencing from 1994 till 1999 for providing labour. The complainant was working in ONGC under a contract of labour by to be provided by Parishram Labour Co-operative Society. ONGC never gave any appointment letter to the complainant for. He further stated that the complainant abstained to report as when he was shifted from the office to Rig 2. Complainant was not a workman of the ONGC. He was the workman of Parishram Labour Co-operative Society. Therefore, ONGC was neither required nor gave any notice to the complainant. Rather the complainant stooped coming on duty out of his own will. The ONGC can give him work unless Parishram Labour Co-operative Society provides him work and also ONGC cannot direct or instruct the Society in the matter. The workman did not cross-examine the witness on the point of issuance of appointment letter to workman, tenure and terms of contract of Society with ONGC and as to why the workman stopped coming to work assigned by the Society. Thus the same are being uncontroverted thus may be believed as true.

6. Later after the closure of evidence by ONGC, complainant prayed for leading more evidence. Same was allowed. The complainant submitted his additional affidavit/examination in chief and repeated his earlier averment. He also filed some documents which the ONGC denied their veracity. These documents reveal that the complainant was the workman/ contract worker of the aforesaid contractor addressed to the Security Officer of ONGC for issuance of Gate pass or the identity card for the purpose of entry into ONGC premises. Thus these documents do not establish that complainant was in any way the employee of ONGC. However these documents vindicate the contention of the ONGC that the complainant was the employee or contract labour of the Society. Thus these documents do not help the complainant in any way.

7. Shri G.K Parmar representing the complainant submitted in his argument that complainant was not given any notice and also any pay in terms of notice. Therefore the complainant is entitled for reinstatement with full back wages. He further advanced his arguments that the witness examined by the ONGC stated in his statement on oath that complainant stopped coming on duty, therefore, ONGC admits that the complainant was the employee of ONGC. This argument is untenable because one has to read the whole statement which makes it very much established that complainant was the contract labour of the contractor Society (i.e. first party no. 1).

8. The learned Solicitor, K.V.Gadhia for ONGC argued that ONGC filed his written statement wherein it stated and that too complainant admitted in his cross-examination that ONGC did not give him any appointment letter. Complainant in his cross-examination also admitted that he was working with Contractor Parishram Labour Co-operative Society, O.P.No.1 and the said Contractor used to pay him his salary. The witness examined by ONGC never admitted that ONGC might have given appointment letter to the complainant.

9. The learned Solicitor, K.V.Gadhia for ONGC further argued that a reference for regularisation of workmen including the complainant is pending adjudication in the Tribunal and if the same is rejected by this Tribunal then the order of the Tribunal in the present case would amount to allowing the main reference without adjudication which cannot be said to be permitted in law. He further argued that it would not be wise to reinstate the workman who left the job 18 years ago without any reason.

10. After considering the evidence and arguments of both the parties, I am of the considered view that complaint is not maintainable. First the main reference relates to the 139 workmen and all those workmen have not been impleaded while if this complaint is allowed then it would amount to allow the main reference. Thus the complaint is bad for non-joinder of all the workmen and misjoinder of all the contractors as the contract with Contractor Parishram Labour Co-operative Society, O.P.No.1 ceased in the year 1999 and in his place new contractor entered into contract with ONGC. Besides this in the main reference, there have been nine parties (as opposite parties) while complainant has made ONGC Contractor Parishram Labour Co-operative Society, O.P.No.1 as opposite parties. Second, the complainant has utterly failed to establish the Master-Servant relationship between ONGC with him, as the contractor Society was proved to pay the master of the complainant. Third, in the year 1999, new Contractor replaced Parishram Labour Co-

operative Society, as service provider contractor and same has not been made party, therefore, without making him the party, such relief is not possible to be granted. Fourth, as per the main relief in the Reference 48 of 2004 the complainant has been shown as attendant in TBG i.e. Technical Business Group Department, meaning that he was working as attendant under the contractor, while in the complaint he has sought the relief of reinstatement as peon with full back wages with ONGC. Fifth, He has been seeking relief after a lapse of long period and he has not stated in his examination as to how he sustained himself and his family without any employment for such a long period. Thus the complaint has failed to prove his case; therefore complaint deserves to be dismissed.

11. Thus in view of the aforesaid discussion, the complaint is hereby dismissed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 31 अगस्त, 2016

**का.आ. 1886.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स ओ. एन.जी.सी. लिमिटेड एवं अन्य के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 43/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 29.08.2016 को प्राप्त हुआ था।

[सं. एल-30011/1/2013-आईआर (एम)]

समीर कुमार दास, अवर सचिव

New Delhi, the 31st August, 2016

**S.O. 1886.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 43/2013) of the Central Government Industrial Tribunal/Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. ONGC Ltd. and other and their workman, which was received by the Central Government on 29.08.2016.

[No. L-30011/1/2013-IR (M)]

SAMIR KUMAR DAS, Under Secy.

#### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

##### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad,  
Dated 26<sup>th</sup> July, 2016

##### Reference: (CGITA) No. 43/2013

1. The Basin Manager,  
ONGC Ltd., Makarpur Road,  
Vadodara (Gujarat).
2. M/s Abhay Intelligence & Security Service,  
17-20, Gujarat Industrial Estate, Behind A.S. Motors,  
Old Chhani Road, Baroda (Gujarat)

... First Party

##### V/s

The General Secretary,  
Bhartiya Karmachari Sangh,  
Vcishwakarma Shram Sadhna Trust,  
101, Shirali Complex, Anustu Tekri, Kothi Chart Rasta,  
Vadodara – 390001

...Second Party

For the First Party : Shri K.V. Gadhia

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-30011/1/2013-IR (M) dated 07.03.2013 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the charter of demands of Nav Jagrut Labour Union i.e. (1) Payment of 25% House Rent, (2) Rs.200/- per month on account of uniform maintenance charges/washing allowance, (3) City Compensatory Allowance, (4) Rs.500/- for Conveyance Allowance, (5) Paid National Holidays, (6) Snacks and Tea facilities, and (7) Shift allowance for their 39 members (list enclosed) working as Security Guards in the establishment of ONGC Ltd., Baroda through contractor M/s Abhay Intelligence & Security Service, is legal and justified? What relief the contract workmen are entitled to?”

1. The reference dates back to 07.03.2013. Both the parties were served by registered post 23.02.2015 and first party ONGC Ltd., submitted the vakalatpatra Ext.6 of his advocate on 07.12.2015. Since then second party has been absent and has not preferred to submit the statement of claim. Thus, it appears that the second party are not willing to prosecute the case.
2. Thus, the reference is dismissed in non-prosecution of the case by the second party.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1887.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, अहमदाबाद के पंचाट (संदर्भ सं. 1011/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-41012/60/95-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1887.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1011/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad as shown in the Annexure in the Industrial Dispute between the management of Western Railway and their workmen, received by the Central Government on 05.09.2016.

[No. L-41012/60/95-IR (B-I)]

RANBIR SINGH, Section Officer

**ANNEXURE**

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD**

**Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad,  
Dated 15<sup>th</sup> July, 2016

**Reference: (CGITA) No. 1011/2004**

The Mandal Railway Manager,  
Western Railway, Bhavnagar – 392001

...First Party

V/s

The Mahasachiv,  
Western Railway Kamdar Sangh,  
TBZ – 17, Gurunagar, Gandhidham,  
Kutch – 370201

...Second Party

For the First Party : Shri N. J. Acharya  
 For the Second Party : Shri O.P. Vashistha

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/60/95-IR (B-I) dated 17.04.1996 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the demand of the Western Railway Kamdar Sangh, Gandhidham against the management of Divisional Railway Manager, Bhavnagar that Shri D.J. Dabbi having passed the written test, completed the training course of Guard successfully on 02.02.1993 should be promoted and posted as Guard w.e.f. 02.02.1993, irrespective of the imposition of penalty in his earlier post as A.B.C., valid and justified? If so, to what relief the workman is entitled for and what directions are necessary in the matter?”

1. The reference dates back to 17.04.1996. The second party submitted the statement of claim Ext. 2 on 08.04.1997 with a service on the advocate of the first party. The first party submitted the written statement Ext. 5 on 30.04.1998.
2. The second party in his statement of claim has stated that he was appointed as Assistant Booking Clerk in the grade of 975 to 1540 in the Bhavnagar Division. He applied for the promotional post of Guard in the scale of 1240 – 2040. He succeeded the examination. He was sent for training on 17.12.1992 which he successfully completed on 02.02.1993. All the candidates junior to him were promoted and posted as Guard in the aforesaid scale with effect from 02.02.1993 but he was denied to be appointed as Guard in the aforesaid scale without any reason. He made the representation but to no result. Thus, he has prayed for the aforesaid relief to be appointed as Guard in the grade pay of 1240 – 2040 with effect from 02.02.1993 with back wages. The first party in his written statement Ext. 5 has stated no dispute can be raised for the promotion as it is the management's prerogative to consider each case on its merits. The second party Mr. Dhabi was not eligible to be promoted as he was imposed penalty on account of his misconduct committed by him during the course of duty.
3. The second party has also filed the documents which indicate that the second party was not given promotion despite successful training but the document also indicates that the second party was failed to maintain devotion to duty and thereby violated Rule No. 3.1(II) of the Railway Service Conduct Rules.
4. The second party workman was orally examined by the tribunal on 06.10.2005 and reiterated the pleadings made in the statement of claim. But he has not denied that he was not subjected to departmental enquiry wherein he was held guilty of misconduct under the Rule No. 3.1(II) of the Railway Service Conduct Rules.
5. Thus, the contention of the first party is correct under law that it is the prerogative of the management to appoint an employee on a promoted post. In this case, the second party has been found guilty of misconduct. Therefore, he cannot claim as a matter of right to be appointed on the promoted post despite succeeding the examination for promotion and successful training. Thus, the reference has no force and the action taken by the first party was legal and justified.
6. Thus, the reference is decided accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1888.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ टोकयो मित्सुबिशी यु एफ जे लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, मुम्बई के पंचाट (संदर्भ सं. 14/2004) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-12012/311/2003-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1888.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2004) of the Central Government Industrial Tribunal-cum-



Labour Court No. 2, Mumbai as shown in the Annexure in the Industrial Dispute between the management of Bank of Tokya – Mitsubishi UFJ Ltd. and their workmen, received by the Central Government on 05.09.2016.

[No. L-12012/311/2003-IR (B-I)]

RANBIR SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.2, MUMBAI

**PRESENT :** M.V. DESHPANDE, Presiding Officer/Judge

#### REFERENCE NO.CGIT-2/14 of 2004

EMPLOYERS IN RELATION TO THE MANAGEMENT OF BANK OF TOKYO-MITSUBISHI UFJ LTD.

The General Manager;  
Bank of Tokyo-Mitsubishi UFJ LTD.  
15<sup>th</sup> Floor, Hoechst House  
193, Vinay K. Shah Marg  
Nariman Point  
Mumbai- 400 021

**AND**

THEIR WORKMEN

The General Secretary  
Bank of Tokyo-Mitsubhishi Employees Association  
15<sup>th</sup> Floor, Hoechst House  
193, Vinay K. Shah Marg  
Nariman Point  
Mumbai- 400 021.

#### APPEARANCES:

FOR THE EMPLOYER : Mr. L. L. D'Souza, Representative.

FOR THE WORKMEN : Mr. Vinay Menon, Advocate.

Mumbai, dated the 15<sup>th</sup> July, 2016

#### AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No.L-12012/311/2003-IR (B-I), dated 22.02.2004 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 has referred the following industrial dispute to this Tribunal for adjudication:

“Whether the action of the management of Bank of Tokyo-Mitsubishi Ltd, Mumbai in dismissal of Shri Viswanath Shetty is justified? If not, what relief the workman is entitled to?”

2. After the receipt of Reference notices were issued to both the parties. In response to notice second party union has filed Statement of Claim Ex-11. According to the second party union, the concerned workman was appointed in the first party Bank on and from 15/06/1984 in the post of Clerk. He was elected as General Secretary of second party Union in 1986. He took active part and keen interest in the affairs of the Union so as to ensure proper industrial peace inter-se the Bank and its employees. He being the General Secretary of second party would question the officers of the bank, in case with regards to service conditions of employees concerned. This became much of eye-sore to the management and the first party connived with the officers, so as to remove him out of way.

3. According to the workman, ultimately in 1993 the first party Bank put an accusation to workman alleging that he had committed forgery and as such lodged a criminal case which is now pending before Hon'ble Court. He was suspended and prevented from entering the first party Bank. Thereafter he contested election, once again for the post of General Secretary and was elected as General Secretary in the year 2001 but on 25/1/2001 when the workman attempted to enter the premises he was confronted by Mr. M. Izaki, who showed him two letters, one which contained the permission to enter the union office and other a charge sheet alleging misappropriation and causing loss to the Bank. He was also issued the letter dated 25<sup>th</sup> September, 2001 on 5/10/2001 wherein it is alleged that some where in the month of May, 1999 workman had forwarded certain medical bills to the Bank for reimbursement which were false and as such he had committed an act of gross misconduct within the meaning of Para 19.5(j) & (m) of the Bipartite Settlement dated, 19<sup>th</sup> October, 1966.

4. According to the workman he was called upon by the First Party to show cause, within 10 days of receipt of the said letter. He has filed a detailed explanation on 30<sup>th</sup> October, 2001. However thereafter the first party issued a Charge Sheet, dated 6/12/2001, to him alleging that he was guilty of misconduct as enumerated in the Bi-partite settlement and was informed that one Mr. Kishore K. Bijlani of the New-Delhi Branch was authorized to hold and conduct the enquiry as Enquiry Officer. The enquiry was commenced on 3/1/2002 at 11.30 a.m. and same was attended by him. On that date his Defence Representative, Mr. Sankar Joshi, had to go to his native place. Accordingly, the subsequent procedure of the enquiry commenced and workman duly participated in the same.

5. It is contention of the workman that his Defence Representative, Shri Joshi, could not remain present on fixed dates due to his personal difficulties. Despite the absence of the Defence Representative, he took part in the enquiry and took full note of the proceedings. Thereafter it came to be adjourned to 3/4/2002 despite the fact that his defense representative could not remain present since he was required to complete certain religious rituals pertaining to his father's demise. The opportunity has not been given to him and the management had conducted the inquiry in disregard to the Principles of Natural Justice. It is contended that inquiry was conducted in colourable exercise of management's rights and in hasty manner.

6. According to the workman Enquiry Officer denied his request to grant him time so that he could bring his defence representative. Thus, the said so called inquiry is nothing but a farce created in the eyes of law. This action of management shows that first party has engaged in unfair labour practices in total violation of Principles of Natural Justice. As such the findings given by the Enquiry Officer Shri Kishore Bijlani are totally perverse as the same are based on the statements and documents which have not been proved. According to the workman the findings of the Enquiry Officer are perverse and thus deserve to be set aside. He therefore, prays that the inquiry be declared not fair and proper and the findings of Enquiry officer be declared perverse and punishment be set aside with full back wages.

7. The first party resisted the Statement of Claim by filing their Written Statement at Ex-12. According to them the workman has submitted medical bills of his mother's treatment in Ameya Maternity and Surgical Nursing Home. The details of the bills are as follow.

Bill No.	Date	Amount
458	13 <sup>th</sup> May 1999	10,150/-
480	28 <sup>th</sup> June 1999	11,500/-
700	2 <sup>nd</sup> April 2000	22,850/-

8. Accordingly he was paid by the Bank, the following amounts in respect of the above bills submitted by him:

Bill No.	Date	Amount
458	10 <sup>th</sup> June 1999	7,405/-
480	28 <sup>th</sup> August 1999	8,490/-
700	26 <sup>th</sup> May 2000	15,591/-

9. According to the first party it was further brought to the notice of Bank that they were false bills. They directed the workman to show cause within 10 days of receipt of the show cause notice as to why disciplinary action should not be taken against him for committing an Act of gross misconduct within the meaning of Para 19.5 (j) and (m) of the Bipartite Settlement dated 19<sup>th</sup> October 1966. The workman submitted a letter dated 8<sup>th</sup> October, 2001 to the Disciplinary Authority and requested the bank to furnish copies of all the bills. The Bank forwarded the copies of the bills vide Bank's letter dated 8<sup>th</sup> October, 2001. The workman thereafter submitted a letter dated 10<sup>th</sup> October, 2001 and requested for further period of 10 days time to submit his reply to the show cause notice. He was granted 10 days time and he was directed to submit his reply to the show cause notice by letter dated 25<sup>th</sup> October, 2001. Again he requested for additional period of 5 days to submit his reply and his request was granted by the Bank. Thereafter the workman had submitted his reply on 30<sup>th</sup> October, 2001. The Disciplinary Authority after perusing the reply dated 30<sup>th</sup> October, 2001 to show cause notice did not find any satisfactory reasons and therefore issued a charge sheet dated 6<sup>th</sup> December, 2001 alleging various charges level against him as specified in the charge sheet. The workman was charged with acts of gross misconduct within the meaning of Para 19.5 (j) and (m) of the Bi-partite Settlement dated 19<sup>th</sup> October, 1966. Workman appeared before Enquiry Officer, he was allowed to defend himself by his defense representative of his choice. However, in the entire enquiry proceedings, 13 different dates were given but the workman was unable to bring his defence representative or an advocate of his choice who was also permitted to defend himself in the inquiry. Presenting Officer of the Bank submitted the documents before the Enquiry Officer in support of the charges leveled against him and a copy of the same was also supplied to the workman. Workman was also permitted to inspect the original documents which were submitted by the Presenting Officer. Enquiry officer directed the workman to produce certain documents which were in his possession and the relevancy of those documents pertaining to the

charges leveled against the workman but he failed to produce the documents till the date of enquiry proceedings. Presenting Officer of the Bank examined four management witnesses in support of the charges leveled against him. However workman failed to cross examine any of the management witnesses. On 23<sup>rd</sup> May, 2002 when the second management witness Dr. F.E. Palia was examined by the Presenting Officer, before the Enquiry Officer, the workman chose to remain absent in enquiry proceedings and walked out of the enquiry room without any valid reasons and without cross examining the management witness and without signing the proceedings.

10. According to the first party management, workman did not avail of the opportunity given to him to lead evidence on his behalf and did not even file any documents in support of the case. He failed to bring his defence representative in the inquiry even for once. Thereafter the Presenting Officer submitted his written brief on 17<sup>th</sup> July 2002 the workman sought time to submit his written reply. He again sought further time vide letter dated 25<sup>th</sup> July, 2002 and even he also leveled false allegations against the Enquiry Officer. In the circumstances the Enquiry Officer after waiting till 5<sup>th</sup> August, 2002 therefore had no other option but to finalize the report without written brief of the workman. After analyzing the oral evidence on record, the Enquiry Officer was of the view that charges as leveled against the workman were conclusively proved and accordingly submitted his report dated 5<sup>th</sup> August, 2002. Disciplinary Authority thereafter forwarded the report of the enquiry along with the proposed order of dismissal dated 20<sup>th</sup> August, 2002 and workman was informed that in terms of Para 12(a) of Bi-partite Settlement dated 10<sup>th</sup> April, 2002, he was given opportunity of a hearing regarding the proposed punishment and therefore he was directed to appear before the Disciplinary Authority on 30<sup>th</sup> August, 2002 in person. He was granted time to submit his written arguments. After considering the written submissions of the workman the Disciplinary Authority vide his Order dated 12<sup>th</sup> September, 2002 passed the order of dismissal by way of punishment for gross misconduct under Clause 19.6(a) of the Bi-partite Settlement dated 19<sup>th</sup> October, 1966. The workman thereafter filed his appeal dated 18<sup>th</sup> October, 2002 to the Appellate Authority. However the Appellate Authority was of the view that there was no violation of any procedure of the Bi-partite Settlement and the I.D. Act, 1947 and entire procedure was scrupulously followed. The Appellate Authority concurred with findings of the Disciplinary Authority, confirming the punishment of dismissal passed by Disciplinary Authority by its order dated 18<sup>th</sup> December, 2002. Thus the contention of first party is that the punishment as awarded by the Disciplinary Authority was justified and proportionate to charges leveled against him. So according to them contents of the Statement of Claim are false.

11. Following are the Preliminary Issues for my consideration. I record my findings thereon for the reasons to follow.

#### ISSUES

#### FINDINGS

- |  |      |
|--|------|
| 1. Whether inquiry conducted is fair and proper? | Yes. |
| 2. Whether findings are perverse?                | No.  |

#### REASONS

#### ISSUES NOS. 1 & 2:

12. The main objection raised on behalf of second party workman is that he was not offered an opportunity to conduct his case. The departmental inquiry has been challenged on the ground that the proceeding were conducted in the absence of defence representative and despite request for adjournment made by workman, the Inquiry Officer proceeded ex-parte. Ld. Counsel for the second party workman contended that domestic inquiry held against workman was not as per the Principles of Natural Justice. This argument is based on the grounds as under.

- First party has hastily conducted the enquiry.
- Workman was deprived representation by his defence representative.
- He was not offered an opportunity to be represented by lawyer.
- Inquiry Officer acted in biased manner and acted as the representative of the management.

13. In the context, if we see the pleadings of the second party workman in his Statement of Claim, the only ground pleaded by him is that the proceeding were conducted in the absence of his defence representative and despite request for adjournment made by workman the Inquiry Officer proceeded Ex-parte.

14. In this respect, I would like to point out that the enquiry recorded categorically shows that the inquiry proceedings were held on 3/1/2002 to 3/7/2002. Ongoing through Exhibit- 52, it appears that on 3<sup>rd</sup> January 2002 workman requested to the Inquiry Officer to postpone the enquiry as defence representative Shankar Joshi had gone to his native place to perform the last rites of his father. The date was postponed and next date was fixed on 26<sup>th</sup> February 2002. On 26/2/2002 workman requested for adjournment by sending fax on the ground that his defence representative had not still returned to Mumbai and therefore the next date was fixed on 3<sup>rd</sup> April 2002. On 3/4/2002 inquiry

proceedings were adjourned because the defence representative was absent. The next date was fixed on 21<sup>st</sup> May 2002. On that date workman and his defence representative were absent. On that date charge sheeted employee submitted letter mentioning therein that due to unforeseen circumstances he was not attending the inquiry. However the letter Ex-14 was silent about the presence of his defence representative. But then the proceedings were adjourned and the next date was fixed as 22<sup>nd</sup> May 2002. On 22/5/2002 workman and his defence representative were absent and the proceedings were adjourned to 23<sup>rd</sup> May 2002. On 23/5/2002 statements of management witnesses were recorded but the defence representative was not present and the next date was fixed on 3<sup>rd</sup> June 2002. On 3/6/2002 the proceedings were adjourned. However on that date also Defence Representative was absent next date was fixed on 4<sup>th</sup> June 2002. On that date the proceedings were adjourned to lead defence evidence as well as to file the documents and on that date also defence representative was not present and next date was fixed on 11<sup>th</sup> June 2002 on that date also the proceedings were adjourned due to non-availability of defence representative and next date was fixed on 12<sup>th</sup> June 2002 and again the proceedings were adjourned due to non-availability of defence representative. Similarly on 2<sup>nd</sup> July 2002 and 3<sup>rd</sup> July 2002 proceedings were adjourned due to non-availability of defence representative.

15. It can be seen that the enquiry was repeatedly adjourned on the ground of absence of defence representative. The management witnesses were examined on 23<sup>rd</sup> May 2002. On that date workman declined to participate in the enquiry as the Inquiry Officer declined to grant any further adjournment. Even it can be seen that the workman was given an opportunity to produce documents and to lead evidence. On the request made by workman the proceedings were adjourned to 4<sup>th</sup> June, 2002. On 4/6/2002 the workman sought adjournment on the ground that his defence representative was not available. The proceedings were adjourned as a last opportunity to the workman on 12<sup>th</sup> June, 2002. Even on 12<sup>th</sup> June, 2002 neither workman or his defence representative came nor did he file any documents or examine any witness in his defence. Ex-15 shows that workman requested the Inquiry Officer to adjourn the proceedings to 2<sup>nd</sup> June, 2002. On that date the proceedings were adjourned and the workman was given understanding that if he would fail to lead evidence on 2<sup>nd</sup> July, 2002, the proceedings would be concluded Ex-parte. Even on 2<sup>nd</sup> July 2002, workman did not bring his defence representative and sought an adjournment. On that date, he wanted to appoint Mr. B.S. Mule as his Defense Representative. Hence, the inquiry was concluded after inquiry proceedings.

16. It can be seen from the aforesaid record of the inquiry proceeding that workman failed to produce his evidence, despite opportunities were given to him by the Inquiry Officer. In that circumstances, it cannot be said that the opportunities were not given to the workman during the inquiry proceedings and therefore he cannot claim that inquiry was concluded hastily without giving opportunity to him. If the workman was not in a position to keep present his defence representative and claiming adjournment on the same grounds on number of dates, then the Inquiry Officer has no option but to proceed with the inquiry. On the other hand that would show the conduct of the workman which leads to the inference that he did not want to participate in the inquiry fairly and defend himself to disprove the charges leveled against him.

17. Ld. Counsel for the management seeks to rely on the decision in case of **Bank of India V/s. Apurba Kumar Saha, 1994 II CLR 131**, to submit that;

*“when employee had refused to avail of the opportunities provided to him in the proceeding of defending himself against the charges of misconduct involving his integrity and dishonesty, he cannot be permitted to complain later on that he had been denied the opportunity of defending himself of the charges leveled against him and the disciplinary proceeding conducted against him by the employer had resulted in violation of Principles of Natural Justice of fair hearing.”*

18. Ld. Counsel for the management also resorted to in case of **Pepsu Road Transport Corporation V/s. Rawel Singh, 2008 (117) FLR 354** wherein it has been observed that;

*“Apart from that it is also clear from the record that so far as charge as to unauthorized absence of the respondent is concerned; the same is duly established from the record. The Inquiry Officer, in our opinion rightly observed that charges (II) and (III) were consequential in nature and based on charge (I) and hence all the charges can be said to have been proved against the respondent. It is not a case of not extending an opportunity to the employee but not availing of opportunity by the employee. Therefore, the finding recorded by the Labour Court that the inquiry was vitiated being violative of natural justice and fair play is based on ‘no evidence’ and must be set aside”*

19. Ld. Counsel for the management also resorted to decision in case of **State Bank of India V/s Hemant Kumar 2011 I CLR Page 1** wherein it has been observed that,

*“We are of the view that both the reasons assigned by the Tribunal for condemning the departmental enquiry as defective are completely untenable. The Principles of Natural Justice cannot be stretched to a point where they would render the in house proceedings unworkable. Admittedly, the respondent had not appeared for the enquiry on two earlier dates. On the third date too he was absent and there was no intimation from him before the*

*Inquiry Officer, yet the Tribunal insists that it was the duty of the Inquiry Officer to find out from the concerned department of the Bank whether any intimation or application was received from the respondent. Let us take a case where inquiry is not being held in the bank premises or even in the same town, where the concerned branch of the bank is located. In such situation, it may take hours or even a day or two to find out; whether any letter or intimation from the person facing the inquiry was received in the bank and for all that time the Inquiry Committee would remain in suspended animation. The Tribunal's observation that it was only the third date of hearing and hence, it could not be said that the respondent had adopted dilatory tactics can only be described as unfortunate. We completely reject the notion that three barren dates in an in-house proceeding do not amount to delay. Let the in-house proceedings at least be conducted expeditiously and without any undue loss of time."*

20. In the instant case, it clearly appears that the charge sheeted employee/ workman was given number of opportunities and inquiry was spread over 12 sittings and in none of the sittings the workman's defence representative was present. The proceedings were repeatedly adjourned at the request of the second party workman citing non-availability of his defence representative. It is in that circumstances, it can be observed that sufficient opportunity was given to workman to defend himself.

21. Realizing these difficulties, Ld. Counsel for workman submitted that the management was represented by the Advocate and therefore it was the responsibility of the management to allow the workman to be defended by an Advocate. Submission is to the effect that the management rejected his request to bear the fees of his lawyer and therefore he could not be represented by an Advocate. In the context Ld. Counsel for the workman resorted to Apex Court ruling. The Hon'ble Apex Court in the decision in case of **Director, BCG Vaccine Laboratory, Madras and S. Pandian & Ors** has observed that;

*"The Inquiry Officer combines the judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an inquiry into misconduct. This is sufficient to raise serious apprehensions. Added to this uneven scale is the weight of legally trained minds on behalf of the employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly resorted if the delinquent is given the same legal assistance as the employer enjoys. Justice must not only be done but must seem to be done is not a euphemism for courts alone, it applies with equal vigour and rigour to all those who must be responsible for fair play in action. And a quasi judicial Tribunal cannot view the matter with equanimity on inequality of representation."*

22. In that case Central Administrative Tribunal, Madras Bench directed payment to the legal practitioner assisting the respondents in an inquiry the same remuneration as would be paid to the Presenting Officer who conducted the inquiry for the appellant and who was also a legal practitioner. The contention of the appellant was that the relevant rules governing disciplinary proceedings did not make provision for making such payment. It was held that respondents were under suspension and could not have the resources to bear the fees of the legal practitioner who was assisting them in the inquiry. The Tribunal had not committed in the view of the court, any error in giving the directions regarding payment of legal charges to their advocate. Having regard to these facts and circumstances it was observed that Tribunal has not committed any error in giving the directions regarding payment of legal charges payable to their advocate assisting the respondents in the departmental inquiry on the same rate as were payable to the Presenting Officer who was also a legal practitioner.

23. Here in the instant case, it has not been pleaded by the charge-sheeted employee that he did not have sources to bear the fees of legal practitioner. He did not appoint any legal practitioner in the departmental proceedings to assist him but all the while he sought adjournment on the ground that his defence representative was not present.

24. In the context Ld. Representative for Management Mr. L.L. D'Souza seeks to rely on the decision in case of **Shankar Chakravarti V/s Britannia Biscuit Co., AIR 1979 SC 1652**, wherein it is held that;

*"The issue which is not pleaded cannot be looked into even if there is evidence in support thereof."*

25. In the instant case, it appears that for the first time at the time of argument this issue has been raised by the concerned workman which is neither pleaded nor proved by adducing evidence to the effect that he did not have source of income to pay the fees of legal practitioner who would have represented him in the departmental proceedings. Therefore on this ground also the inquiry cannot be said to have vitiated on the ground that Principle of Natural Justice has not been followed.

26. It is because the report of Inquiry officer (Ex-19) shows that the findings given by him are based on evidence. The charges against the workman were that he submitted bills of medical treatment for Mrs. Devki Shetty for treatment at Ameya Maternity and Surgical Nursing Home and thereafter, it was brought to the notice of the Bank that they were false bills. During the inquiry, statement of Surendra Patil, management witness- 3 was recorded. According to him, he along with his daughter is running nursing home in the name of "Ameya Maternity and Surgical Nursing

Home” for the last seven years. In his evidence he has stated that after verifying the records he replied the queries in this regard for the Bank that no patient in the name of Devki Shetty was admitted in nursing home during the calendar year 1999-2000. According to him the Cash Memo No 458 dated 13/5/1999, was stolen from his nursing home along with carbon copy and the said cash memo No. 458 is not signed by him or his staff. It appears to have been signed by one PramodTripathia pathological technical who used to come to collect sample from nursing home. According to his evidence he lodged police complaint against PramodTripathi and that amount shown in cash memo had never been received by nursing home.

27. It appears that the Inquiry Officer on the basis of evidence concluded that the bills were false as Mr. Shetty’s mother has never been admitted in nursing home and that employee has made false statement in the Bank while seeking reimbursement of his mother’s medical bills. It appears therefore that these findings are based on evidence particularly the evidence of Dr. Patil who was running the nursing home “Ameya Maternity and Surgical Nursing Home”.

28. Even then Ld. Counsel for workman, Shri Vinay Menon submitted that the inquiry was commenced *ex-parte* immediately on the third session of inquiry i.e. 3<sup>rd</sup> April, 2002, wherein the charge-sheeted employee stated, since he was on suspension and half pay, he was unable to meet the expenses of a professional lawyer. Therefore, he requested that all the cost of his professional lawyer be borne by the Management. That request was rejected and inquiry proceeded further. With this the submission is that the inquiry was an eye wash to put up a picture of fairness of inquiry.

29. In the facts of present case, I find that his submission is not acceptable since sufficient opportunities were given to the workman to defend himself but he himself did not avail any opportunity given to him and kept on insisting that proceedings be adjourned, since his defence representative was not available.

30. In this respect even the evidence of Dr. Mrs. F.E. Palia is explicit and material to prove that medicine with which second party workman’s mother was supposed to have been treated, did not match with the disease. This sort of evidence has not been rebutted by second party workman. Even second party workman was given an opportunity of a personal hearing on passing final order on 12/9/2002. In all these circumstances, I am inclined to hold that the inquiry held against the workman is as per the Principles of Natural Justice and the findings of the Inquiry Officer are based on substantial evidence on record. Therefore, I hold that findings are not perverse. Accordingly, issue nos. 1 and 2 are answered as indicated against it in terms of above observations. In the result, I pass the following order:

#### ORDER

1. The inquiry is held fair and proper.
2. Findings of the Inquiry Officer are not perverse.
3. Parties are directed to argue/lead evidence on the point of quantum of punishment.

Date: 15/07/2016

M. V. DESHPANDE, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1889.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार जम्मू-कश्मीर बैंक लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-1, चंडीगढ़ के पंचाट (संदर्भ सं. 31/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-12012/54/2010-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1889.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2010) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure in the Industrial Dispute between the management of Jammu & Kashmir Bank Limited and their workmen, received by the Central Government on 05.09.2016.

[No. L-12012/54/2010-IR (B-I)]

RANBIR SINGH, Section Officer

**ANNEXURE****BEFORE SHRI S.P.SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH****Case No. ID 31/2010**

Shri Bashir Ahmed Khan son of Shri Noor Mohammed Khan,  
resident of Darish Kadal, Baghi Sunder Payeen, Srinagar( J&K)

...Workman

**Versus**

1. The Chairman, Jammu & Kashmir Bank Limited,  
Corporate Head Quarters, M.A. Road, Srinagar (J&K)
2. The Branch Manager, J&K Bank Limited,  
Regional Engineering Branch, Hazratbal, Srinagar (J&K)

...Respondents

**Appearances**

For the workman : Shri Pawan Longia Advocate.

For the management : Shri N.K.Zakhmi Advocate.

**AWARD**

Passed on 11.07.2016

Central Govt. vide notification No.L-12012/54/2010-IR(B-I) dated 1st of February 2011 has referred the following dispute to this Tribunal for adjudication:

“Whether the action of the management of J&K Bank Limited in terminating the services of Sri Bashir Ahmad Khan, S/o Sri Noor Mohd. Khan w.e.f. 15.01.2008, is legal and justified? To what relief the workman is entitled?”

2. The brief facts of the case according to the workman are that on 15.1.2008 while he was holding the post of Cashier-cum-Clerk he was dismissed from service. It is pleaded by the workman that he remained posted at Branch Office of the J&K Bank at Fruit Complex, Srinagar w.e.f. 23.6.1996 as Cashier-cum-Clerk up to 1.5.1997 and he was relieved from the said Branch to HSH Street Branch on 1.5.1997 in pursuance to the order dated 1.3.1997. It is pleaded by the workman that after relieving of the workman an alleged fraud of Rs.579025/- was noticed to be committed in the SB Account No.2204/23 in the name of one Hafiz Ali Baba whereby a fraudulent insertion of the entry of Rs.100000/- to Rs.700000/- had been made thereby raising the balance by Rs.600000/- out of which Rs.579025/- has been withdrawn by presentation of cheques during the period 19.5.1997 to 24.5.1997. The management lodged an FIR No.167/97. The workman was arrested despite the fact that workman was transferred from the said Branch much before the said incident and the workman was no way related to the said incident. Workman was released subsequently and investigating agency seized all the relevant record of the bank including the account opening form, specimen signatures of the account holder, the ledger sheet, cheque book issue register, the cheque presented in the account for withdrawal of money etc. Investigating agency, obtained the handwriting specimen of all the staff members posted at the Branch for identification of the real culprit having indulged in conversion of the figure 1 to 7 which were later on sent for forensic examination. Besides police investigation the management has also conducted investigation at its own level and statement of all the persons were recorded. It is further pleaded by the workman that besides police investigations, the management conducted investigation at its own level and in that process, recorded the statements of all the officers posted at the branch including the workman and also taken specimen signatures which were sent separately to some handwriting expert, but the outcome or copy thereof was never supplied to the person concerned including the workman. It is also pleaded that the management of bank initiated disciplinary proceedings against eight officials posted at the concerned branch at the relevant time including the workman. The workman was charged with the following allegations: –

- (a) Processed opening a fake and fictitious SB Account in the name of Hafiz Ali Baba; and
- (b) Therefore making fraudulent insertion in the entry of Rs. 1,00,000/- to Rs. 7,00,000/- raising the balance from Rs. 1,11,100/- to Rs. 7,11,100/- as on 07-04-1997.

- (c) The other Officials posted at the Branch subjected to disciplinary proceedings included S/Sh. Ab. Ahad Malla, Branch Manager, Ab. Majid Wani, Manager Accounts (2<sup>nd</sup> Officer), Mohammad Arif Chisti, Manager Accounts, Ali Mahammad Mattoo, Spl. Assistant (allowed to function as Manager Accounts), Manzoor Ahmad Sheikh, Rafiq Ahmad Malik, Shakeel Ahmad Wani all the three Cashier cum Clerks.”

3. It is further pleaded by the workman that on the basis of investigation conducted by the police authorities informed the management of the bank that involvement of the workman had not been established in view of the expert opinion of FSL and the communication clearly mentioned that on the basis of evidence other staff members i.e. Manzoor Ahmed, Cashier-cum-Clerk, Abdul Majid, Manager and Ab. Ahad Mala, Chief Manager had been found involved. It is pleaded by the workman that ignoring all the above facts the workman was charge sheeted and in pursuance of the charge-sheet dated 18.8.1997, an inquiry was got conducted by the management and on the basis whereof an order of discharge from service was passed against the workman on 24.7.2001. The inquiry was not conducted in fair and proper manner and order of the disciplinary authority was based on the wrong enquiry. The workman filed appeal before the appellate authority and the Appellate Authority vide order dated 14.11.2003 set aside the order of discharge accepting the appeal of the workman and the fresh inquiry was ordered. It is further pleaded that though a fresh inquiry was not permitted under the Rules but the inquiry was completed in a slip short manner which is in total disregard to the factual and legal proposition and against the settled principle of natural justice and fair play. It is further pleaded by the workman that during the inquiry it has been fully established that managerial staff tried to escape the liability and workman was made scapegoat without any justification. It is pleaded that as regard liability of summation is concerned that could not be stretched to the extent of inflicting major punishment upon the workman and this fact was very much in the knowledge of all and there is no denial that summation could not be done by the workman due to heavy rush and workload.. It is also pleaded that circumstances of alteration of allotment were based on imagination and concoction as order of allotment provided saving bank ledger No.23 to the workman and did not bear any evidence of any alteration of whatsoever nature. The Inquiry Officer while returning the findings of guilt against the workman do not at all deal with the vital circumstances and choose to shut his eyes simply to incriminate the workman without any basis. Bank-management also refused to supply copy of FSL Report to the workman during the inquiry. Punishment awarded to the workman was in a hurriedly manner and excessive. The workman prayed for his reinstatement in service with all consequential benefits. Along with claim statement workman also filed affidavit and number of documents. The workman also placed on record the copy of order dated 15.1.2008 by which he was dismissed from service.

4. The management submitted written statement stating therein that the workman was dismissed from service after prolonged investigation, disciplinary proceedings and his case was considered by the appellate authority under rules. After transfer of the workman from the branch Fruit complex, Srinagar, it came to the knowledge while tallying the balance in SB account found a discrepancy of Rs. 6lakhs. On further investigation it came to the notice that fraudulent insertions had taken place in SB account No. 2204/23 in the name of ostensible account holder namely Hafiz Ali Baba that was opened and maintained by the workman till is posting at the branch and after the transfer of the workman, withdrawals in the said account took place on 19.5.1997 to 25.5.1997 culminating in fraudulent withdrawals. The management lodged FIR with the police and the police arrested some officials of the branch including the workman and it was found that the workman during his tenure at the Fruit Complex Branch processed opening of a fake and fictitious saving bank account No. 2204/23 in the name of one Hafiz Ali Baba on 25.3.1997 by compromising on vital issues/counts which finally led to a fraud to the tune of Rs. 579025/- which was committed by insertion/alteration in the credit entry of Rs. 100000/- to Rs. 700000/- by making digit 1 to appear as digit 7 at lakh place value raising the balance from Rs. 1,11,100/- to 7,11,100/- on 7.4.1997 in the said SB account. The workman did not obtain photograph of the ostensible account holder of Hafiz Ali Baba on 25.3.1997 and also while issuing the cheque book will fully ignored that the signature of the depositor on the cheque book issue register did not tally with the one on the cheque book issue requisite application. The management pleaded that it is a fact that payment cashier gave a statement that the payment of withdrawal of Rs. 5000/- dated 1.4.1997 was credited to the said factitious account on the said date also connected the workman with the fraud and the workman did not do summation while carrying over balance to the next page to avoid detection of fraud. The management further pleaded that the workman with malafide intentions, got his allotment altered in the allotment register in respect of taking down saving account balance for the month of April 1997. Ledger No. 20 was allotted to the workman while ledger No. 23 pertaining to the fictitious account was allotted to another cashier/clerk Shri Manzoor Ahmed Sheikh which were got swapped by the workman and the workman paved the way for fraudulent incident. It is further pleaded that the admitted hand writings were sent to Forensic Lab Srinagar and Forensic lab Shimla and the Srinagar Lab did not indict the workman but Shimla lab stated that nothing could be definitely stated regarding authorship or otherwise of writing referred to it alongwith admitted hand writings. Thus no reliance was placed on both the labs nor the same was used against the workman, therefore, making it public did not arise. The workman was served with the charge sheet. The other officials were also charge sheeted as per individual involvement and subsequently cases against all of them were taken to logical conclusion as per rules which only shows the fair, rationale, transparent and just approach of the management. It is further submitted that inquiry was



conducted in a fair and proper manner and workman was found guilty and earlier inquiry was set aside by the Appellate Authority which leads credence to the fairness and impartiality of the Appellate Authority and also to the system of the management and the appellate authority rightly ordered for fresh inquiry. A fresh inquiry was conducted by the Inquiry Officer in fair and proper manner and as per the principles of natural justice. The workman was afforded full opportunity to put across his case, produce his witnesses and other evidence and cross-examine the witnesses of the management. The documents were provided to the workman. The enquiry officer submitted his report. Show cause notice was given to the workman. The workman was also provided with the personal hearing and after considering all the material the order dated 15.1.2008 was passed. The appeal filed by the workman was also decided on merits. In the reply filed by the management, the management also seek opportunity to lead evidence in support of the averments made in the written statement to prove the contention of the management in holding the inquiry and subsequent dismissal of the petitioner from service of the bank if the Hon'ble Court is of the view that sufficient material is not on record to prove the charges made by the management. Management has prayed for the dismissal of the reference. Management also along with written statement filed documents of inquiry.

5. Replication also filed by the workman reiterating the claim made in the claim statement.

6. The parties were heard on the issue of fairness of the enquiry conducted by the enquiry officer and order passed by the disciplinary authority and order passed by the appellate authority in appeal. It may not be out of place to mention here that during the course of hearing on fairness of inquiry an application has been filed by the workman for placing on record written arguments and documents W54 to W72. Both the parties also filed written arguments in which they have largely pleaded as per their pleadings in the claim statement and written statement. Along with this the workman had also filed copy of judgment dated 26.2.2013 of 1<sup>st</sup> Additional Sessions Judge, Srinagar by which it is impressed upon that no charge was proved in the criminal case by the management and they were acquitted of the commission of offence for which they were charged.

7. This Tribunal after hearing the arguments on fairness of enquiry, passed order dated 10.9.2013 holding the enquiry to be fair and proper. Aggrieved by this order, the workman filed a SWP No. 2287/2013 before the Hon'ble High Court of J&K. The Hon'ble J&K High Court vide order dated 18.5.2016 passed in the above SWP No. 2287 of 2013 set-aside the findings of para (11) of the order dated 10.9.2013. The Hon'ble High Court of J&K passed the following order:

“For the above stated reason the finding recorded at paragraph(11) of the order dated 10th September, 2013 passed by Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court-I, Chandigarh is set-aside. The Tribunal to proceed ahead with reference made to it by the Central Government and conclude the same within four weeks from the date copy of this order is served.”

8. The management filed the copy of the Hon'ble J&K High Court order dated 10.6.2016 passed in MPNo.01/16 in SWP No.2287/13 which is as under:

“Allowed for the reasons stated in the application. Time is extended by six weeks.”

9. Both parties appeared. Section 11A of the Industrial Disputes Act 1947 (comments) provides as under:

“When the Tribunal allows the management to produce evidence after holding the domestic enquiry as illegal, the evidence given by the employers in domestic enquiry is wiped out and the Tribunal has to record the findings on the basis of evidence before it while adjudicating an industrial dispute pertaining to dismissal of the workman; Luxco electronics Vs. P.O. Industrial Tribunal, 2004LLR 46.”

10. Management moved application dated 7.6.2016 for seeking permission to produce the copy of the FSL report. In this application the management also prayed that since the workman has challenged the enquiry, therefore, he may be asked to lead his evidence first and thereafter the management shall lead its evidence. The workman opposed this application and filed written objection on 8.6.2016. It is pertinent to mention here that the workman had already filed his affidavit in evidence and he workman was examined and cross-examined on that very date i.e. 8.6.2016. The FSL report has already taken on record and also supplied to the workman. Thus there is no need to pass any order on the application of the management and objection of the workman dated 8.6.2016 as the application of the management and objection of the workman become redundant.

11. The workman was issued charge sheet containing the following articles of charges.

Statement of Articles of charge preferred against Mr. Bashir Ahmad Khan (10922) Cashier/Clerk presently under Suspension.

## Article I

That the said Mr Bashir Ahmad Khan (10922), during his tenure at B/O Fruit Complex, Srinagar, committed various acts of omission and commission which culminated into a fraud to the tune of Rs.5,79,025/- by adopting modus operandi of opening of a fake and factitious Saving Bank Account under No.2204/23 in the name of Hafiz Ali Baba S/O Mohammad Sadiq Baba R/O Parimora P.C Depot, and thereafter making a fraudulent insertion in the entry of Rs.1,00,000/- to Rs. 7,00,000/- thereby raising the balance from 1,11,100/- to Rs.7,11,100/- as on 7.4.1997.

- i. He willfully did not obtain photograph of the ostensible account holder namely Hafiz Ali Baba on 25.3.1997.
- ii. While issuing cheque book against the said A/C he ignored the fact that the signature of the so called depositor on the cheque book issue register did not tally with the one on the cheque book issue requisition application.
- iii. His direct involvement into the fraud is corroborated by the fact that the payment cashier has categorically stated that the payment of withdrawal of Rs.5,000/- dated 11.4.97 has been credited to the said fictitious account on the said date at the instance of the said Mr.Bashir Ahmad Khan (10922) cashier/clerk.
- iv. He did not made summations in the said account while carrying over balance to the next page.
- v. The said Mr.Bashir Ahmad Khan (10922) with malafide intensions altered his allotment in the concerned allotment register for taking down Saving Account balance for the month of April 1997. concerning ledger No.20 & 23 in so far as Ledger No.20 was allotted to the said Mr. Bashir Ahmad Khan and ledger No.23 was allotted to Mr. Manzoor Ahmad Sheikh (9482) Cashier/clerk. Which were altered vice versa by the said Mr Bashir Ahmad Khan (10922).

The said Mr.Bashir Ahmad Khan (10922) has thus Indulged in:-

- (a) doing an act prejudicial to the interests of the Bank and gross negligence involving the bank in serious loss which amounts to gross misconduct in Terms of clause 19.5(j) Bipartite Settlement 1966.
- (b) negligence in performing duties and breach of rule of business of the Bank which amounts to minor misconduct in terms of clause 19.7(c & d) of Bipartite Settlement 1966.

**ARTICLE:-II**

That the aforesaid official during his tenure at the aforesaid branch helped his brother in law namely Mr. Mushtaq Ahmad Sheikh, in obtaining loan of Rs.12000/- under sponsored scheme IRDP insofar as he mentioned wrong address though the said Mr.Bashir Ahmad Khan has stood guarantor in the said account. The Said Mr.Bashir Ahmad Khan (10922) thus mislead the bank.

- ii. He prevailed upon M/s. Abdul Gani Nazir Ahmad C/D A/C holder 45 and misused their bill for Rs.12,000/- against which loan of Rs.12,000/- was raised/ released by the Bank in favour of his brother- in- law Mr.Mushtaq Ahmad. The said Mr.Bashir Ahmad Khan (10922) has thus Indulged in:
  - a. An act prejudicial to the interests of the Bank likely to involve the Bank in serious loss, which amount to gross misconduct in terms of Clause 19.5 (j) of Bipartite Settlement 1966.
  - b. Breach of rule of business of the Bank which amounts to minor misconduct in terms of clause 19.7(c) of Bipartite Settlement 1966.”

12. In connection with the charges, the workman examined and cross-examined as WW1. The management in order to prove the charges, filed as many as ten affidavits of MW1 Abdul Ahad Malla, who also relied on documents Ex.M2 and M3 MW2 Shakeel Ahmed Wani who relied on documents Ex.M5 and M6, MW3 Manzoor Ahmed Seikh who relied on documents Ex.MM8, MW4 Ali Mohd Matto, MW5 Rafiq Malik who relied on document Ex.M11, MW6 Mohammed Arif Chesti, MW7 Ab. Majeed Wani, MW8 Fayaz Ahmad Beigh and MW9 Fida Hussain Shah who relied on documents Ex.M16 to M24. The management gave up the evidence of 10<sup>th</sup> witness Shri Ali Mohd Bhat and did not produce him for cross-examination. These nine witnesses of the management were cross-examined by the workman .

13. For proving the charges against the workman, management filed documents as well as oral evidence. The documents and oral evidence has been duly considered. Ex.W5 is the letter written by Sr. Supdt. of Police Crime

Kashmir to the management Chairman's Secretariat J&K Bank Ltd. Srinagar. In this letter Sr. Supdt. Of Police has mentioned that "the criminal involvement of Shri B.A.Khan, cashier-cum-clerk has not been established in view of the expert opinion received from FSL". Ex.W71 is the copy of the judgment of the Ist Additional Sessions Judge Srinagar in file No. 04/B/45/receipt decided on 26.02.2013 in which Abdul Ahad Malla ,Manzoor Ahmad Sheikh and Bashir Ahmed Khan (workman) were charged under the office U/S 409,420,471,477-A,468, and 120-B of RPC. Vide judgment dated 26.02.2013 all the above persons were acquitted of the commission of offences for which they were charged. The management submitted that acquittal in criminal case is not binding on the Tribunal because there are different parameters in holding guilty in criminal case and proving the charges in domestic enquiry. The management cited 2012 L.L.R 236 Jyothi Kondaraju Vs. Additional General Manager( CS&HRD) and 2012 L.L.R.362 Kehsab Chandra Saha Vs. United Commercial Bank and Ors.

14. As stated above, the above stated documents do not prove the involvement of the workman for the offences. So far the documentary evidence led by the management is concerned; the criminal involvement of the workman is not established.

15. In oral evidence MW1 Abdul Ahad Milla in his cross-examination admitted that the charge sheet was issued against him in connection with the opening on account by the workman. The charges were for not obtaining photographs of the account opener and second charge was for cancellation of demand draft worth Rs. 300000/-. This witness also admitted that departmental enquiry was conducted against him and punishment of censure was awarded. This witness also admitted in cross-examination that Ex.W19 is his statement given before Deputy General Manager I&B. In Ex.W19 this witness( MW1) stated "I have given concession of photographs to the captioned account on the plea that this account was introduced by a valuable client of the bank named Hazi Mohammed Baba who is maintaining his account with us." This witness also to a question regarding not making caution for photographs, this witness replied "I did not mark the caution because the workman told me that account opener is well known to me and he will not issue the pass book till the photographs are not submitted." This witness also admitted "on 24.5.1997 I did not ask for photographs of the account opener because that was a matter of draft cancellation which came from another table".

16. MW2 Shri Shakil Ahmad Wani admitted in his statement that he was charge sheeted pertaining to the fraud in this case. This witness was also warned to be cautious in future. This witness also admitted that he joined the branch on 17.5.1997 and worked there till 2000. This witness also admitted that "a cheque was received for rupees three lakhs where as there was not sufficient balance to honour the cheque. The cheque was not sent back to the drawer. It was kept because some bank official told me that some DD credit cancellation is coming to the account".

17. MW3 Manzoor Ahmed Seikh admitted in his cross-examination that he was charge sheeted in connection with the same bank fraud. The charge against him was that in ledger allotment order initially he was allotted ledger No.23 but it was changed to ledger No.20. The charge against him was that why he did not represent to the immediate officer for making initial on the order of the change of the ledger. This witness replied that he was a clerk at that time and even oral instructions were sufficient to be complied by him. He was exonerated of the charge.

18. MW4 Ali Mohammed Matto in his cross-examination stated that he was charge sheeted regarding the bank fraud but he was charged for draft cancellation and change in allotment of ledger and insertion in the account summation not attested.. This witness also admitted that he was punished as censure entry in charge sheet issued against him. The charge against him was for not summation the account was also proved.

19. MW5 Rafiq Malik also admitted in his cross-examination that he was charge sheeted in connection with the fraud in the bank. This witness stated that he was charged for not obtaining second signatures on the reverse of the cheque. No charge was proved against him.

20. MW6 Mohammed Arif Chesti in cross-examination stated that in the same matter charge sheet was issued to him. He was advised to be careful in future by the disciplinary authority. This witness clearly stated that he issued the cheque book to the account holder Hafiz Ali Baba in discharge of his official duty on authentication of the account holder.

21. MW7 Abdul Mazid Wani also stated in his cross-examination that in the same matter charge sheet was issued to him and he was advised to be careful in future. This witness also admitted in cross-examination that he (MW7) verified the signatures of the introducer Shri Khazir Mohd. Baba who was a current account holder on the opening of new account of Hafiz Ali Baba.

22. MW8 Fayaz Ahmed Beigh stated in his cross-examination that "I made a credit entry in the account of Hafiz Ali Baba. The date is not remember. After making the credit entry total balance was recorded by me. The balance was Rs. 270,975/-. Prior to the credit entry there was no total balance recorded in the account". MW9 Fida Hussain Shah stated in cross-examination that he never remained posted in Fruit Complex Branch Srinagar.

23. Thus taking into consideration of the statements of all the witnesses of the management, almost all the witnesses were charge sheeted in the same matter and most of the witnesses were let off by awarding minor punishment. The above statements of the management' witnesses cannot be fully relied upon against the workman as most of the witnesses were charge sheeted almost in the same matter and were awarded minor punishments. This is common human nature that co-wrong-doer in order to save themselves, may make statements against the other person. Thus on the basis of the oral evidence produced by the management, the charges as mentioned in the above charge sheet not proved against the workman except the charge No. IV contained in Article I of the charge sheet. Surprisingly the workman was also charge sheeted for the charge as contained in Charge No.ii of Article No.1 which is as under:

“ii. While issuing cheque book against the said A/C he ignored the fact that the signature of the so called depositor on the cheque book issue register did not tally with the one on the cheque book issue requisition application.”

MW6 Mohammed Arif Chesti in his cross-examination stated that he (Mohammed Arif Chesti) issued the cheque Book to the account holder Hafiz Ali Baba in discharge of his official duty. Thus in view of the clear statement of MW6 Mohammed Arif Chesti, the charge No.2 as contained in Article I of the charge sheet can not be held to be proved rather disproved against the workman.

24. So far the other evidence is concerned, it is admitted that the workman was transferred from the Fruit Complex Branch on 1.5.1997 and the fraudulent transactions took place between the periods from 17.5.1997 to 24.5.1997. On the entire evidence the management failed to prove the charge No. i, ii, iii, v as contained in the Article 1 of the Charge sheet. As regard Article 2 of the charge sheet is concerned, the management has not adduced any cogent and reliable evidence to prove theses charges.

25. In so far as the charge no. iv in Article 1 of the charge sheet is concerned that the workman did not make summation in the said account while carrying balance to the next page, the workman Bashir Ahmad Khan while appearing as WW1 himself admitted “it is correct that I did not summation at the bottom of the page. Voluntarily stated: - it was not done due to heavy rush”. Thus the charge no. iv contained in article of the charge sheet is proved against the workman.

26. Considering the entire facts and circumstances of the case in hand, the dismissal order of the workman dated 15-01-2008 is illegal, unjust and discriminatory and cannot be sustained and the same is set-aside. So far as the charge no. iv as contained in Article 1 of the charge sheet the same is held to be proved against the workman. As regard the punishment for this proved charge is concerned, the co-wrong- doer MW IV Ali Mohammad Mattu who also admitted that summation was not done, was awarded minor punishment of censure entry. Thus similarly placed workman also may be awarded the punishment of censure entry for this act of omission.

27. In view of the above discussion, the management is directed to reinstate the workman within one month from the date of publication of this award with 40% back wages. The management will be at liberty to make entry of censure as observed above in the service record of the workman for the charge No. iv contained in Article No.1 of the charge sheet.

28. The reference is answered accordingly. Central Govt. be informed. Soft as well as hard copy be sent to the Central Government for publication.

Chandigarh  
11.07.2016

S. P. SINGH, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1890.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ सं. 19/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-12012/144/2006-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1890.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 19/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 05.09.2016.

[No. L-12012/144/2006-IR (B-I)]

RANBIR SINGH, Section Officer

**ANNEXURE****BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR****Industrial Dispute No. 19 of 2007****Between :**

Sri Harish Chandra Kumar,  
3/90 Mundera Bazar,  
Chauri Choura,  
District Gorakhpur

**AND**

The Assistant General Manager,  
State Bank of India,  
Region -1, Zonal Office,  
Gorakhpur

**AWARD**

1. Central Govt. Mol & Employment, vide notification no. L-12012/144/2006-IR (B-1) dated 13.02.07, has referred the following dispute for adjudication to this tribunal.
2. KYA PRABANDHAN STATE BANK OF INDIA GORAKHPUR DWARA SRI HARISH CHANDRA KUMAR CLERK CUM CASHIER KO ADESH DINANK 25.06.03 KE DWARA NAUKARI SE NIKALA JANA NYAYSANGAT HAI? YADI NAHI TO KARMKAR KIS ANUTOSH KA HAQDAR HAI?
3. In short the case of the worker is that he joined the service of the management on 15.09.86 as clerk cum cashier at Chauri Choura Branch, District Gorakhpur.
4. It is alleged that in the year 1994 one Sri Niyamat Ullah Ansari was also posted as Agriculture Assistant at the branch who deliberately committed fraud of Rs.50 in the RD Account no.1309 maintained by Km. Pinki Lath (since deceased) daughter of Sri Om Lath.
5. It is alleged that one Sri Ikram Ullah Ansari who was also posted there as field officer was having strenuous relations with the worker on the ground that there took a fraud in the year 1992-93 in advances in which both the aforesaid persons were badly involved but no action was taken against them by the bank whereas the then branch manager was removed from the service of the bank on the basis of inquiry held against him for the misappropriation of bank's fund committed by both the above officers and they were saved at the intervention of one Sri G M Khan, General Secretary of the State Bank of India Officers Association. During the course of domestic inquiry against Sri S N Mishra the then branch manager the worker being Treasurer of SC/ST Forum raised his voice to the effect that no innocent person should be held responsible for the above misconduct and fraud case committed by the above officers of the branch except the real culprit should be dealt with according to law. This act of the worker was highly disliked by the above two officers of the branch and they started feeling animosity against him. Thereafter the worker was transferred to Sardar Nagar Branch, Gorakhpur, on 12.01.95 at the behest of the above officers.

6. It is alleged by the worker that he was placed under suspension by the authorities of the bank vide order 01.11.95. No preliminary investigation was ever conducted by the bank prior to passing of the suspension order. Thereafter the worker was issued a charge sheet dated 13.11.98. After conclusion of inquiry proceedings he was issued a show cause notice dated 08.02.03 by the competent authority and ultimately the services of the worker was removed by the disciplinary authority by order dated 25.06.03. The worker preferred an appeal against the final order which too was dismissed by order dated 27.10.05.
7. There are so many factual aspect of the matter asserted by the worker in his claim statement but the same will be considered and discussed while recording findings on merit of the case at appropriate stage.
8. On the basis of pleadings raised by the worker in his claim petition, he has prayed that the action of the management be held illegal and unjustified and he be directed to be reinstated in the service of the bank with full back wages, continuity of service and with all consequential benefits.
9. Apart from above nothing has been stated in his claim statement.
10. Management has filed its reply against the claim statement of the worker in which it alleged that the worker was issued charge sheet dated 13.11.98 against which the worker submitted his reply dated 05.04.99. The reply of the worker was not found satisfactory by the disciplinary authority, therefore, it was decided to hold a regular inquiry to inquire into the charges and accordingly enquiry officer was appointed by the disciplinary authority. First date of inquiry was fixed by the enquiry officer with direction to the worker to attend the inquiry along with his defense representative on 19.08.2000. On the said date worker was present with his defense representative and the presenting officer produced documents which were marked as Ext M.1 to 27 copies of which were given to the r representative of the worker by the enquiry officer. On the next date of inquiry defense representative requested to adjourn the inquiry on medical grounds which was allowed by the inquiry officer and next date in the inquiry was fixed as 23.09.2000. The defense representative for the worker also requested to change the inquiry officer, which was refused by the disciplinary authority. On the request of the D.R. he was also shown originals of some of the documents and copies of documents mentioned at serial no.1, 3, 4, 5, 7, 9 and 11 were also provided to the worker by the enquiry officer and on 17.10.2000 copies of rest of the documents were also provided to the defense representative of the worker. The presenting officer on various dates of inquiry has proved the charges leveled against the worker.
11. On merit of the case after elaborating the banking procedure in day to day the management has denied the entire allegations of the worker and it is alleged that the worker with malafide view has blamed the officers of the bank. It also alleged by the bank that the gross misconduct has been proved during the domestic inquiry. There was proper documentary evidence hence oral evidence was not necessary in the light of proved misconduct and the request of the worker is not tenable in the eye of law. The charge sheet is legal and valid. The claimant was given opportunity of his defense before passing of final orders by the disciplinary authority. The final order is legal and should not be interfered by the tribunal as the same has been passed after considering the inquiry report in which the enquiry officer has proved all the charges. It is also alleged by the bank that in case this tribunal does not find the inquiry to be fair and proper in that event the bank should be given an opportunity to prove the charges.
12. In the last it has been prayed that the claim of the worker be dismissed being devoid of merit.
13. In this case worker has not filed rejoinder.
14. After exchange of pleadings between the parties, my learned predecessor by order dated 10.12.08 has framed a preliminary issue to the effect whether the domestic inquiry conducted by the management against the workman was fair or proper and not against the natural justice.
15. My learned predecessor by order dated 30.06.11 has held that the inquiry held against the worker was not fair and proper ad gave an opportunity to the bank to prove the charged on 18.08.11 by adducing all the evidences.
16. In order to prove the charges management has examined M.W.1 Sri Jamir Hasan who was chief manager in Sardar Nagar Branch from June 95 to Nov.97. M.W.2 Sri S P Gupta, Hand Writing Expert, who has compared the signatures of CSE Harish Chandra made on vouchers and found that signatures were done by CSE Harish Chandra and M.W.3 Yogendra Prasad, Branch Manager, during the period June 93 to June in ChauriChoura Branch.
17. Worker Harish Chandra examined himself as w.w.1.
18. Both the parties have filed several documents and the management bank has also filed relevant registers which shall be discussed at appropriate stage.
19. I have heard both the parties at length and have perused the documents carefully.
20. Paper no.11/5-6 is the charge sheet issued the charged employee Harish Chandra (HEREINAFTER REFERRED TO AS CSE).

21. First charge leveled against worker is that he got opened an Saving Bank account no 14120 on 25.07.95 in the name of Ram Milan by depositing Rs.100/- and in this account on 5.8.95 and 11.8.95 Rs.1000/- and 200/- were deposited respectively. Thereafter under a conspiracy with Ram Milan by enhancing actual balance in the said account withdrew Rs.20000/- on 28.7.95, 17000 on 31.7.95, 13000/-on 3.8.95, 23000 on 14.8.95, 10000 on 19.08.95 and 10000 on 29.08.95 and in order to conceal the fraud committed by him he either destroyed or removed the ledger sheet opening form and some vouchers and prepared a forged ledger sheet in the name of Sri Ram Mishra for the same saving account no.14120 showing balance of Rs.100/- only.
22. Second charge leveled against CSE is that during his posting at Chauri Choura Branch during the period September 86 to December 90 he has received a sum of Rs.50/- on 5.8.94 for depositing it in her recurring account no.1309 and did not deposit it in bank nor entered the amount in ledger nor in bank record but shown the entry of depositing of Rs.50/- in her pass book and made his initial signature.
23. In the claim statement he alleged that some officers of the branch got opened the said bank account no.14120 in the name of Ram Milan by depositing Rs.100/- and these officers are responsible for withdrawing the amount fraudulently. He has also pleaded that all concerned officers of the bank with the support of local gundas and criminal of the local area gheraoed the applicant 17.09.95 which was holiday being Sunday and used coercive measures and badly assaulted him and used physical force at about 4.30 p.m. asking the worker to confess the alleged fraud by putting blank paper before him. The above officers were also having with them a blank ledger sheet and under pressure they got the same filled from the worker in his own hand writing. They also lodged FIR against worker at P.S. ChauriChaura on the same day at 7.00 p.m. on the strength of confession letter obtained by them by using undue threats. While in the written statement it is alleged that confession letter was made on free will of worker and he has given different versions at different times which can be seen in the alleged letter dated 18.09.95 addressed to S.P. Gorakhpur Dehat by the claimant.
24. In order to prove the charges management has filed two confession letters of worker one is sent by post which was received in the bank on 20.09.95, its photo copy is paper no. 11/23-24 and photocopy of envelop is 11/25 in which he has requested that if any report is given to police / administration it may kindly be taken back and requested to open OL account in his name and releasing his arrear and salary in that account stating that he will repay all the dues as he has given the money to the persons from whom he has taken loan.
25. Second confession letter is paper no.11/29-31 dated 17.09.95 in which he has confessed that he has withdrawn the money by fraud which he will deposit in installments otherwise the same may be adjusted from housing loan PF and arrears. He has further admitted that he got opened account no.14120 of Ram Milan on 25.07.95 by Rs.100/- and thereafter he endorsed showing Rs.98000/- in account of Ram Milan and in the concerned ledger sheet and also signed it and thereafter he has withdrawn Rs.20000/- on 28.07.95, 17000/- on 31.07.95, 10000 on 29.08.95 by filling withdrawal forms and making signature of Ram Milan, he received the amount, but the vouchers relating to these transactions could not be destroyed by him. Further he has withdrawn Rs.13000 on 3.08.95, 23000 on 24.08.95 and 10000 on 29.08.95 and he has destroyed these three vouchers and also accounts opening form and also ledger sheets. Further he has prepared a forged ledger sheet in the name of Sri Ram Mishra showing his account no.14120 in his writing and further he had requested that he may be pardoned and he will deposit all the amount withdrawn by him as above. Regarding this confession letter i.e. 17.09.95 worker claimant Harish Chandra has stated in his claim statement that bank officers have manhandled him and got this letter written by him under duress but he has not stated anything regarding his confession letter sent by him through registered post.
26. A perusal of his confession letter dated 17.09.95 reveals that it is written in natural course with same flow of pen. Worker has sent an application to S P Dehat Gorakhpur on 18.09.95 a copy of which is paper no.7/2-3 under UPC and copy of envelop is 7/4 wherein he has stated that on 17.09.95 at 4.00 p.m. branch manager along with miscreants of the local area forced him to write the confession letter by showing him country made pistol.
27. In this regard worker Harish Chandra Kumar w.w.1 has stated in his cross examination that he has sent a letter to SP Dehat by an ordinary post. He has further admitted that he has not mentioned anything in the letter addressed to SP regarding his earlier confession letter sent to the bank by registered post on which he has admitted his signatures. He has further admitted that in the letter sent to SP he has not mentioned that he was forced to prepare ledger sheet paper no. 11/26 in the name of Sri Ram Mishra for saving bank account no.14120.
28. If bank manager with other miscreants of local area forced the worker to write confession letter on 17.09.95 and to prepare ledger sheet for the same account in others name worker may not sit silently after sending letter to S.P. in this regard but worker would have tried to lodge FIR against the authorities of the bank who forced him to write confession letter on pistol point or he would have taken the matter to court by moving an application under 156(3) CR. P. C. against bank authorities. It appears that the worker has simply done a formality by sending a letter to SP Dehat Gorakhpur and thereafter he did not take any further action which also makes his case doubtful that he was forced to write confession letter on pistol point or by using coercive method assaulting him.

29. It is also beyond imagination that on 17.09.95 being holiday on account Sunday why several bank officers along with miscreants assembled together and forced worker claimant to write confession letter.
30. Worker Harish Chandra has admitted in his cross examination that in paper no.11/102 it is correctly mentioned that his work was to issue token after withdrawal form and making in ledger. He further deposed that all the dates mentioned in the charge sheet he was on duty and he has done entry and posting in the relevant registers.
31. Bank in support of charge sheet examined M.W.1 Zameer Hasan who was chief manager in Sardar Nagar Branch from June 95 to Nov.97. He has deposed that the account of Ram Milan was opened on 25.07.95 by depositing Rs.100/- in saving bank account no. 14120 and the pass book was prepared Harish Chandra which was issued on 25.7.95. Thereafter in this account Rs.200/- and Rs.1000/- was deposited on 11.08.95 and 5.08.95 respectively. Cashier receipt scroll register is filed in the court in original and its photocopy is paper no. 11/198 and 11/200. From this account no.14120 several withdrawals on different dates as mentioned in the charge sheet were made. Original withdrawal forms are filed in the court of CJM Gorakhpur in criminal case and its true certified copies is filed which are paper no.11/216 to 11/221. Worker Harish Chandra has given two confession letters its original are filed in criminal case and certified copy is filed in this case which are paper no.11/224 to 11/228. Worker has sent his first confession letter on 12.09.95 as this date is mentioned in registered cover which was received in the bank on 20.09.95. Second confession letter dated 17.09.95 was given by worker by hand in the bank. Original ledger sheet for account no. 14120 is filed in the criminal case and its certified copy is filed in this case as paper no. 11/222-223 showing Rs.100/- deposited by Ram Milan in his account. Photocopy of attendance register of the dates on which withdrawal was done has also been filed which is paper no.11/201-208 showing presence of worker in the bank on these dates. It was the duty of worker to issue token after making posting in the ledger sheet on receiving withdrawal form, preparing and issuing of new pass books. Original payment register for the relevant dates mentioned in the charge sheet are also proved by the witness who has also filed its photocopies of all the six dates which are paper no. 11/209-214 showing payments as mentioned in the charge sheet was made from the account no.14120. He has said on oath that worker has submitted confession letter without any pressure from his side and further deposed that no such complaint was made by the worker to any senior officers of the bank. He further deposed that worker has admitted in his confession letter dated 17.09.95 that worker got opened account of Ram Milan having account no.14120 and was responsible for payment of Rs.93000/- against deposit of only Rs.1300/- and has also admitted that he has prepared another ledger sheet of account no.14120 but by mistake he has entered the name of Sri Ram Mishra in place of Ram Milan. Worker has further admitted to have toured original ledger sheet, account opening form and three withdrawal forms of Ram Milan. He has further deposed that account that account no.14119 was also opened by the worker on 24.7.95 in favor of Manish Chopra and on different dates as mentioned in charge sheet money was received by Harish Chandra personally. In this way he has withdrawn Rs.93000/- on different dates.
32. In his cross examination he has admitted that the process of payment of amount for more than Rs.5000/- on withdrawal form is that on receiving withdrawal forms counter clerk has duty to issue token after making entry in ledger sheet and send it to passing officer and passing officer after comparing the signature of the account holder will pass it and send it cashier for payment.
33. No other relevant factor has come in his evidence and this witness has supported the allegation of charges.
34. As discussed above worker was posted as clerk cum cashier and after receiving withdrawal form it was his duty to see as to whether amount mentioned in withdrawal form is available in the account of the account holder and if yes then he will issue token and send the withdrawal form and register to the passing officer who will see the posting done by cashier cum clerk in the register and after verifying the signature will pass it and send it to the paying cashier. Therefore, the prime duty lies on the cashier to ensure whether sufficient balance is available in the account or not and also it is the duty of the passing officer to see it whether entry made by the clerk cum cashier in the ledger on the basis of withdrawal form is correct or not. If cashier cum clerk plays a foul role by endorsing fake entry in the ledger book showing sufficient balance then passing officer will have no option but to pass it unless foul play of cashier cum clerk comes to his notice. As original ledger sheet is alleged to have been removed by the worker this tribunal cannot give a positive finding on this point. But definitely it is evident that as worker was duty bound to see sufficient balance available in the account only then he was duty bound to issue token and send it to the passing officer to pass it and without playing foul game by the worker as cashier cum clerk no payment from this account can be made.
35. Bank has also examined M.W.2 Sri S P Gupta, Hand Writing Expert who has proved his report which paper no. 11/32-44 and in his opinion he has found that on the withdrawal form dated 28.07.95 for Rs.20000/- dated 31.7.95 for 17000/- and dated 29.08.95 for Rs.10000/- are written by worker Harish Chandra and also he has found ledger sheet prepared in the name of Sri Ram Mishra for account no.14120 is written by Harish Chandra. Certified photocopies of the said vouchers are 11/217, 11/219 and 11/221 and photocopy of ledger sheet is 17/223. Hand writing expert has compared the disputed hand writing with the available hand writing of Harish Chandra. The evidence of hand writing expert and his report is acceptable as nothing has come in his cross examination to disbelieve his testimony.



36. Management has also examined M.W.3 Sri Yogendra Prasad who was manager in chauri choura from June 93 to June 96 where worker Harish Chandra was also working as cashier cum clerk. He has given evidence regarding charge no. 2(ka) and 2 (kha). The charge leveled against the worker is that the worker has obtained Rs.50/- from PinkiLat for depositing in her account no.1309 but has not deposited the amount and made entry in her pass book. He has proved paper no.11/48 which is original opening form of account of R.D. No. 1309. He has also proved original ledger sheet paper no.11/50 which shows that no deposit of Rs.50/- was made in the ledger sheet on 5.8.94. He has also proved original scroll register of cashier which is paper no.13/51 and in this also no deposit of Rs.50/- is found mentioned and also proved day book 11/52 in which also no mention of the amount. He has also proved the original pass book showing deposit of Rs.50/- was written on 5.08.94 and proved the initials of worker Harish Chandra. He has also proved the complaint made by depositor which is paper no. 11/45-47. In his cross examination he has deposed that on receiving of complaint from PinkiLat he inquired the matter and perused the pass book and ledger sheet and found that amount was mentioned in pass book by the worker and signed by him but has not entered the amount in ledger sheet and he did not found any need of hand writing expert report on this point. PinkiLat could not be examined by bank in this court as it is admitted to worker in his cross examination that PinkiLat has died. The testimony of M.W.3 appears to be acceptable as nothing has come in his cross examination to disbelieve him.
37. From the above discussion of evidence and documents it is found that worker Harish Chandra has prepared forged withdrawal forms in his own hand writing which were passed by the passing officer on receiving the withdrawal forms along with ledger after tallying the signature of the account holder and send the same to the paying cashier for payment. Worker Harish Chandra has send the withdrawal forms for passing knowingly that no sufficient balance is available in the account of account holder and he has further admitted all these facts in both the confession letters and has also prepared a forged ledger sheet for account no. 14120 in the name of Sri Ram Mishra in place of Sri Ram Milan. It is also proved that on 5.8.94 at branch chauri choura he received 50/- from Pinki Lath for depositing the same in her R. D. account no.1309 but has not deposited the amount in the bank and made entry in her pass book. Thus he has defrauded the bank by not depositing Rs.50/- after receiving the amount from the account holder.
38. Bank failed to prove charge no.1 (kha) in which it is alleged that Harish Chandra has destroyed opening form of account no. 14120, ledger sheet and concerned vouchers.
39. Therefore, charge no.1 (ka) & (ga) and charge no.2 (ka) and (kha) are fully proved against the worker. Accordingly it is held that the bank has rightly dismissed the services of the worker on the proved charges which need not to be interfered. Under the facts and circumstances of the case there appears no justification to interfere in the punishment under section 11-A of the Act.
40. Award is passed accordingly against the worker

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1891.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ सं. 49/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-12012/237/2005-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1891.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 49/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 05.09.2016.

[No. L-12012/237/2005-IR (B-I)]  
RANBIR SINGH, Section Officer

**ANNEXURE****BEFORE SRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM LABOUR-COURT, KANPUR.****Industrial Dispute No. 49 of 2006****Between :**

Bashishtha Muni Mishra,  
Son of Late Sri Ram Lakhan Mishra,  
Resident of 70/16 Noorullah Road,  
Near Prayag Hotel, Allahabad.

**AND**

The Deputy General Manager,  
State Bank of India,  
Zonal Office,  
Cantonment Board, Varanasi.

**AWARD**

1. Central Government, Mol, New Delhi vide notification no. L-12012/237/2005-IR (B-1) dated 26.06.06 has referred the following dispute for adjudication to this tribunal.
2. KYA PRABHANDHAN STATE BANK OF INDIA ALLAHABAD KE DWARA SRI VASHISHTHA MUNI MISHRA, DAFTRI KO ADESH DINANK 22.09.04 KE DWARA NAUKARI SE NIKALA JANA NYAYOCHIT TATHA NYAYSANGAT HAI? YADI NAHI TO KARMKAR KIS ANUTOSH KA AHIKRI HAI?
3. The case of the worker in short is that he was appointed as messenger cum water boy on 17.02.79 on six months probation and subsequently was confirmed on 17.08.79. Considering the work and conduct of the worker he was promoted at the post of Daftri. Due to his trade union activities the officers' community were displeased from him and posted him at branch office Johnstonganj Branch, Allahabad. It is alleged that on 12.08.99 a new saving bank account baring no. 01190022061 was allowed to be opened in an irregular manner in the SBI Johnstonganj Branch Allahabad in the name of one Smt. Prema Devi whose specimen signature and photograph were verified by a clerk named Sri A K Sharma who was not at all authorized to do so. This saving bank account was introduced by Smt. Maina Devi depositor of saving bank account no. 58901 and her introductory reference or Smt. Prema Devi was taken as good and accepted by the above named Sri A K Sharma to open the account and the account was thus opened after completion of necessary formalities. On 13.08.99 the depositor newly opened account no.22061 deposited a cheque dated 16.07.99 for Rs.67050/- issued by Life Insurance Corporation of India in her favor which was collected by the bank through local clearing and account of the cheque was credited in the said saving bank account of Smt. Prema Devi on 17.08.99. The withdrawal was allowed and passed for payment by an authorized official of bank and the payment was made by the concerned cashier to Smt. Prema Devi at the counter.
4. Subsequent to the above transaction it came to the notice of the bank authorities that the Life Insurance Corporation cheque in question which was sent per registered post belong to some other Smt. Prema Devi and Smt. Prema Devi whose savings bank account no.22061 was allowed and opened on 2.08.99 was not a genuine lady who has given a wrong address and was untraceable. The authorities of the bank then inquired the whereabouts of Smt. Prema Devi from the introducer of her account Smt. Maina Devi. A FIR was lodged with the police by the Life Insurance Corporation of India about the loss of cheque and against Smt. Prema Devi and Smt. Maina Devi. The applicant was arrested by the police on 15.02.2000 and was bailed out later on.
5. A departmental inquiry against the worker was instituted against the worker which was wholly illegal and against the provisions of service regulation. The inquiry was commenced on 18.06.02 and was concluded on 29.06.02 in hasty manner and the inquiry officer submitted his report on 26.09.02 holding all the allegations of charges as proved. Enquiry officer acted unlawfully in holding the charges as proved against the worker. The finding of the enquiry officer is highly erroneous and perverse as he has committed gross irregularity in relying upon the police case diary to prove the allegations of charges. The enquiry report submitted by the enquiry officer is perverse and illegal. On the basis of illegal inquiry report the disciplinary authority proposed to inflict the punishment of dismissal from service vide order dated 22.09.04 and he was required to reply the same within 7 days. The worker complied it but the disciplinary authority did not consider any submission of the worker and confirmed the proposed punishment order by passing final order on 26.10.04. The appeal of the worker was decided in most casual manner by the appellate authority by order dated 19.01.05, where by the appeal was rejected. Thus the worker has prayed his reinstatement in the service of the bank with full back wages, continuity of service with all consequential benefits.

6. Along with the claim petition worker has also filed certain documents paper no. 5/8-40 which are in the nature of photocopies.
7. Management filed reply against the claim petition of the worker denying the entire allegations of the worker. It is alleged that the worker filed his reply against the charge sheet on 01.03.02 which was not found satisfactory; hence it was decided to hold a domestic inquiry against the worker. The presenting officer made available documents P. Ex 1 to 14 to the defense representative and also made available a list of witness. The defense representative made a request to the inquiry officer to provide two documents for the defense which were made available to him. The defense representative also requested to the inquiry officer to stop the proceedings of the case in the light of criminal case pending against the worker upon which the inquiry officer explained that the present inquiry is going on under the orders of the Hon'ble High Court passed on 08.11.01 in writ petition no. 33817 of 2001. P.W.1 to P.W.4 were presented before the inquiry officer who were cross examined by the defense representative. M.W.3 Smt. Maina Devi confirmed that she had made the complaint to the bank on 07.10.99. The inquiry was concluded by the enquiry officer on 26.06.02. The worker was given every possible opportunity to defend his case. Ultimately the enquiry officer submitted his report on 26.09.02 to the disciplinary authority in which he found that out of three charges, charge no.1 and 3 were proved and charge no.2 was partly proved. Thereafter, the disciplinary authority issued show cause notice proposing punishment and considering the reply of the worker confirmed the proposed punishment by passing final order dated 26.10.04 and appeal preferred by the worker was rejected by the appellate authority by order dated 19.01.05. It is also alleged that the enquiry was fair and according to principle of natural justice and the punishment is based on the proved misconduct hence there is no need to interfere either with the inquiry or with the punishment awarded to the worker and also that the bank has lost the confidence and trust reposed to on the worker. The worker did not raise the objection regarding conduct of the inquiry. The allegation regarding Smt. Maina Devi as co-accused is wrong. Accordingly it is prayed by the management that the claim petition of the worker is liable to be rejected being devoid of merit and it should be rejected.
8. Worker has not filed rejoinder statement in the case.
9. Management vide application dated 08.06.07 has filed 17 documents including enquiry proceedings running into 17 pages and Bank Cash Scroll Register in original.
10. The management vide application 28.09.07 has also filed original accounting form of Prema Devi in original and withdrawal form in original dated 18.8.99 for Rs.65000/-.
11. The relevancy of the documents filed by the both sides shall be discussed at appropriate stage while recording findings of the case on merit.
12. Worker examined himself as w.w.1 whereas management examined Sri Prem Kishan as M.W.1.
13. After recording of evidence of both the sides on merit, this tribunal by its order dated 07.02.13 has framed a preliminary issue to the effect whether the domestic inquiry conducted by the management is just and fair. By order dated 12.08.15 this tribunal held that the inquiry conducted by the bank is just and fair and it will be examined as to whether on the basis of evidence recorded by the management charges stands proved against the worker or not. It is also pertinent to mention here that on 12.08.15, authorized representative for the worker has moved an application stating that he has no issue in regard of inquiry up to the extent of procedure, but the finding enquiry officer is not tenable in the eye of law. Thus it is clear that worker has admitted the fairness of the inquiry procedure adopted in the domestic inquiry and he has only challenged the findings of the enquiry officer.
14. I have heard the representatives for the parties at length and have also perused the records carefully.
15. Learned authorized representative for the worker has contended that the findings of the enquiry officer are perverse as the management failed to prove any role of worker in opening the account in the name of Smt. Prema Devi. It is also contended that the withdrawal of cheque issued by the Life Insurance Corporation of India by authorized official of the bank and the payment was made by the concerned cashier to Smt. Prema Devi at the counter and he has been acquitted in the criminal case lodged by the bank.
16. The authorized representative for the bank contended that the worker has raised dispute regarding his dismissal by order dated 22.01.04 and for the said date reference has been made and it is also contended that from the reference order it is clear that the worker was dismissed by the management of State Bank of India, Allahabad. The date of dismissal and the fact that worker was dismissed by State Bank of India, Allahabad is incorrect and therefore dispute raised and reference made on the on the complaint of worker is bad in the eye of law. He further contended that in domestic inquiry it is found that worker has asked Smt. Maina Devi to introduce Smt. Prema Devi and a fake account was opened and a sum of Rs.67050/- was withdrawn from the said account the cheque of which was issued by Life Insurance Corporation of India in favor of Smt. Prema Devi.
17. As domestic inquiry has been admitted by the worker therefore, the tribunal concluded that the domestic inquiry conducted by the management was just and fair, therefore, now it is to be seen whether on the basis of evidence

recorded in domestic inquiry by the enquiry officer whether charges leveled against the worker stands proved or not.

18. On perusal of charge sheet paper no.8/16 it appears that the worker Sri Bashishtha Muni Misra was issued a charge sheet on the following counts-
  1. (a) that the worker showed special interest in opening of account of alleged Prema Devi and prompted Smt. Maina Devi to introduce Smt. Prema Devi as introducer in opening the account and shown her to be her relative.
  - (b) that you approached Sri U N Kapoor branch manager for releasing Rs.65000/- from the account number SB 5890 of Smt. Prema Devi and attempted to obtain the concerned voucher from Sri Kamal Narain after few days which was not accepted by him.
  - (C). That you along with Sri Rajendra Kumar Dwivedi has committed this fraudulent act.
2. That due to your above misdeed bank has to suffer a loss of Rs.65000/-.
19. It is not in dispute that a fake saving bank account no.5890 was opened in the name of Smt. Prema Devi who was introduced by Smt. Maina Devi and a cheque of the amount of Rs.67050 issued by Life Insurance Corporation of India was deposited in the said account and Rs.65000/- was withdrawn from the account by alleged Smt. Prema Devi.
20. Briefly stated, the contents of charge sheet are that the worker Sri Bashishtha Muni Mishra posted as daftari has taken into confidence Smt. Maina Devi for introducing Smt. Prema Devi at the time of opening of the account of Smt. Prema Devi pretending Smt. Prema Devi to be his relative and thereafter the worker has approached the branch manager Sri U N Kapoor for release of Rs.65000/- from the said account and thereafter he tried to obtain concern voucher from Sri Kamal Narain Bhalla record keeper of the branch and this has put the bank to suffer financial loss to the tune of Rs.65000/-.
21. Management during the course of inquiry has examined four witnesses. P.W.1 Sri G.A. Hashmi stated before the inquiry that none including the charged employee came with Smt. Prema Devi at the time of opening the account. P.W.2 Sri Arvind Kumar Sharma has shown his ignorance as to how the worker has helped Smt. Prema Devi in opening the above saving bank account.. P.W.3 Smt. Maina Devi has stated that the worker got her signature as introducer for the account of Smt. Prema Devi and when she refused to do so she was convinced by the charge sheeted employee. She has also received a letter of thanks from the bank. In her cross examination she has stated that she knows Sri Mishra from 1977 who used to fill up her forms occasionally. She also stated that Sri Mishra told her that Smt. Prema Devi is his relative and obtained her signature as introducer. Management has also examined P.W.4 during the course of domestic inquiry who is Sri Kamal Narain Bhalla who has stated that Sri Mishra charged employee has requested him to provide voucher but he refused to give. It has also come in the inquiry that Sri U N Kapoor has been transferred out of station and therefore, there is no possibility of recording his evidence. Smt. Maina Devi has also made a complaint to the branch manager which is paper no. 8/31-33 and also gave an application to P.S. Kotwali and SSP Allahabad which are paper no.8/34-37 and a FIR has been lodged against the charged employee and Sri Rajendra Kumar Dwivedi.
22. Worker Sri Bashishtha Muni Mishra has also been examined and nothing relevant has come in his statement except that Sri U N Kapoor has not been examined in the case. Although Sri U N Kapoor has not been examined in domestic inquiry due to his non availability but the management's witnesses has proved his writing on bank's cash scroll register in which name of Sri Bashishtha Muni Mishra in short as B N Mishra is written where withdrawal of amount Rs.65000/- is shown on the date 18.08.99. It shows that Sri B N Mishra has approached U N Kapoor for clearance of the cheque, therefore, branch manager has written his name in short as stated by management witnesses.
23. In the light of the above evidence of the management and the charged employee the tribunal has examined the findings of the enquiry officer and tribunal finds that the enquiry officer has well discussed the evidence available on the record of domestic inquiry and no other opinion is possible from the evidence as has been opined by the enquiry officer. Tribunal also finds that the enquiry officer has rightly come at the conclusion that the charges no. 1 leveled against the charged employee stands proved and also charge no.2 stands partly proved.
24. After giving anxious consideration on the report of enquiry officer on charge no.3, tribunal is unable to concur with the findings of the enquiry officer mainly for the reasons that the said charge has been proved only on the basis of the statements recorded by the police during the course of investigation. It is settled legal position that statements recorded by the police authorities during the course of investigation cannot be made basis for proving the charge in domestic inquiry against the charged employee unless witnesses are examined before the enquiry officer.

25. Accordingly it is held by the tribunal that the charge no.3 is not proved as the statements of the witnesses recorded before police authorities is of no help to prove the charge no.3 against the worker.
26. The tribunal, after going through the show cause notice and final order passed by the disciplinary authority, supports the same with full swing. The reasons recorded by the disciplinary authority in show cause notice and while passing the final order concurring with the findings of the enquiry officer. The disciplinary authority has rightly proposed the punishment of dismissal from service considering the facts and circumstances of the case and ultimately has rightly approved the same by passing final punishment order. The tribunal is of the conclusive opinion that the order of punishment passed by the disciplinary authority need not to be interfered at the hands of this tribunal which is perfect and based on sound reasons.
27. Therefore it is concluded that the worker has rightly been punished by the disciplinary authority in the matter of charge sheet issued to him which fully commensurate with the gravity of proved misconduct.
28. Before parting with the award it may also be pointed out here that the learned representative for the management has raised some technical ground regarding maintainability of the present reference before this tribunal.
29. Firstly it has been contended by him that the management of State Bank of India, Allahabad, had never terminated the services of the charged employee. There was no reply from the side of the worker. The tribunal on this point has also examined the final order passed by the disciplinary authority who is none other than the Assistant General Manager, State Bank of India, Region IV, Zonal Office, Varanasi which had passed the order of punishment dated 26.10.04.
30. Therefore on this score the dispute raised by the worker is against the correct facts and reference made by government is apparently suffers from infirmities.
31. It has secondly been argued by the authorized representative for the bank that the charge sheeted employee had never been dismissed from the service of the bank as has been shown in the reference order i.e. 22.09.04. In fact this date is the date of show cause notice issued to the worker by the disciplinary authority after completion of the inquiry whereas the worker was dismissed from the bank's service by order dated 26.10.04, which has not been challenged by the worker.
32. I find force in the contention of the representative for the management. By a bare perusal of the records it is proved that the worker has been penalized by order dated 26.10.04, of the disciplinary authority, but the reference shows that the removal of the worker from the service of the bank has been done with effect from 22.09.04, which appears to be contradictory.
33. Therefore it is held that the charged employee Sri Bashistha Muni Mishra has neither been dismissed by the State Bank of India, Allahabad, nor on the date mentioned in the reference order i.e. 22.09.04 which is the date of show cause notice.
34. In view of above discussions of the facts of the case the tribunal finds that the dispute raised by the worker showing date of dismissal from service as 22.09.04 is incorrect, in fact it is the date of issuance of show cause notice to the worker by the disciplinary authority. As such at any rate it cannot be said that the services of the worker were dismissed by the disciplinary authority on 22.09.04 as referred to in the reference order which also makes the reference order defective, therefore, the worker on this score cannot be granted any relief as claimed by him in his claim petition.
35. Reference is therefore answered accordingly against the charged employee Sri Bashishtha Muni Mishra holding that he is not entitled to any relief as claimed by him in his claim petition.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1892.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर मध्य रेलवे प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ सं. 27/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-41011/36/2007-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1892.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of North Central Railway and their workmen, which was received by the Central Government on 05.09.2016.

[No. L-41011/36/2007-IR (B-I)]

RANBIR SINGH, Section Officer

#### ANNEXURE

#### BEFORE SRI SHUBHENDRA KUMAR, HJS PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

#### Industrial Dispute No. 27/2008

Sri Anil Kumar Tiwari,  
Divisional Secretary,  
Uttar Madhya Railway Karamchari Sangh,  
119/74 Quarter No. 61, Naseemabad, Kanpur.

**AND**

The Divisional Railway Manager,  
North Central Railway, Allahabad.

#### AWARD

1. Central Government, Mol, New Delhi, vide notification No. L-41011/36/2007-IR (B-I) dated 17.01.08, has referred the following dispute for adjudication to this tribunal.
2. Whether the action of the management of North Central Railway in imposing penalty of stoppage of one increment with effect from 01.07.04 to Sri Gulab Chandra Gupta son of Sri Shiv Prasad Gupta, Parcel Supervisor, is legal and justified? If not what relief the workman concerned is entitled to?
3. In short the case of the worker is that he is presently posted as Parcel Supervisor under the management and he was deputed to work as senior shed clerk and in the inventory dated 02.11.03 he received the charge of the goods mentioned there under. The duties of the senior shed clerk is to release the goods after verifying the gate pass and records and in this way about 350-450 articles of goods are to be released daily whereas the work of dating clerk is to mention the date of the goods whether received or not and both these works are of different nature and to do the work two clerks are deputed. On 03.11.03 dating clerk was not on duty then he reported the matter with request to provide a dating clerk but he was asked to work as dating clerk in addition to his work of shed clerk whereupon he objected it but all in vain. On 14.11.03 when the worker was working in the shed a person came with a bilty with railway receipt to get release a scooter booked from Aurangabad to Kanpur Central on verification of the record when no entry was found therein he asked the holder of bilty to see him after one hour and on the same day he delivered the goods to the bilty holder and he also sent an apology letter to his superior. He was issued a charge sheet in the form of SF-II by Divisional Commercial Manager on 08.12.03 whereby he was charged that he returned the holder of bilty on the ground that the good is not available but from the records it is clear that the good was received and this fact was not mentioned in the records which created serious problem to the holder of bilty as a result of which the railway administration has to wipe out the charges for which the worker is responsible. He submitted his reply on 19.12.03 but the same was found unsatisfactory. The railway authorities without considering the reply submitted by the worker imposed a penalty of imposition of stoppage of one annual graded increment vide order dated 17.06.04 which was made effective with effect from 01.07.04. He preferred an appeal but that too was rejected without proper application of mind. Therefore, it is prayed that the punishment order be set aside and he be allowed his increment on the premises as if he had never been awarded any punishment.
4. Worker has also filed certain papers with his claim petition which shall be adumbrated at the appropriate stage.
5. Management submitted its reply in which the working place and the work as detailed by the worker has been admitted. As per effective roster dated 03.01.03 the worker was required to work on the point of senior shed clerk on the inventory of dated 02.11.03 neither the TIA Chief Parcel Supervisor nor Commercial Inspector was present and the worker had not prepared the inventory and the said inventory was prepared by the previous staff for the purpose of making/handing over the charge. The senior shed clerk was ordered to do the work of dating clerk which was in practice due to shortage of staff and he was informed about the order vide letter dated 12.01.03 to follow the same. It is absolutely denied that there was no entry of scooter in the entry shed book and the scooter in question was arrived on 15.10.03 and the version of the worker is wrong that there was no entry in the shed record bilty number was recorded by the worker. The consignee was asked to visit after one hour is false and fabricated. It is admitted by the petitioner that from 20.10.03 to 14.11.03 has checked each and every page of the register and checked about 182 entries and 14.11.03 was recorded for non-arrived of scooter. The reality is

that he did not check the shed record carefully and 14.11.03 was recorded date of non-arrival of goods on bilty when the consignee contacted to not received cell where a complaint was already filed by him then he came to know that his scooter has arrived on 15.10.03 and the delivery of scooter was made to the consignee on 15.11.03. It is admitted that SF-11 was served upon the worker and the allegation leveled therein were found proved and the penalty of stoppage of one increment with effect from 01.07.04 was imposed upon him. There is no illegality or irregularity in the penalty imposed upon the worker. The petitioner failed to perform his duties honestly and the party was informed that his good was arrived at Kanpur on 15.10.03 while the worker has mentioned the date of arrival on bilty as 15.11.03. The competent authority was satisfied with the allegation therefore, the worker has rightly been imposed with the penalty of stoppage of one increment as per rule. Appeal preferred by him has rightly been rejected by the appellate authority.

6. On the basis of above, it has been prayed that the petition of the claimant is liable to be rejected being devoid of merit and it should be rejected.
7. Worker has filed 12 documents paper No.3/9-23. Management has not filed documents in evidence. Worker Gulab Chandra Gupta has examined himself as w.w.1 and the management did not examine any witness in support of its case.
8. I have heard the parties at length and have perused the records.
9. In brief the case of the worker is that he was posted as shed clerk from 03.11.03, copy of order is paper No.3/9. He was also asked to do the duty of dating clerk due to shortage of staff as is clear from the paper no.3/11. He was given SF-11 charge sheet dated 29.11.03 which was received by him on 10.12.03 on the fact that during his duty a scooter was available for delivery which was booked from Aurangabad to Kanpur and the worker has refused the party on 14.11.03 saying that the scooter is not available. It was his duty to check the record before refusing to deliver the scooter and for this reason party as to suffer and railway has to exempt the due charges which is paper no.3/13-14. On receiving this memo worker has submitted his written reply which is paper No.3/15-17 stating that he was posted as shed clerk and he was also asked to do the duties of dating clerk. Due to over load of work it is possible that some mistake might have occurred as he was doing heavy duty every day. From the record it appeared that scooter was received on bilty on 20.10.03. He has asked the party to come after one hour as he has to check the goods received. When party has come again by then he had searched it and entered the date of receiving the goods on 14.11.03 as is clear from paper No.3/12.
10. On receiving this explanation the disciplinary authority has imposed punishment of stoppage of one increment for one year with the observation that the explanation of the worker was not found satisfactory. The order of the disciplinary authority was passed on printed proforma in contravention of Rule 47.26 read with RB's Circular No. E/D&A) 2002/RG-6-27 dated 24.09.02 : RBE 168/2002, in which it is provided that in disciplinary cases the disciplinary authority and appellate authority do not write speaking and reasoned orders and they use printed proforma for this purpose. This is highly objectionable. Therefore, the disciplinary and appellate authority henceforth discontinues such practice.
11. From perusal of punishment order passed by the disciplinary authority it is clear that no fact finding is given in the punishment order passed on printed pro forma paper No.3/18 as to how disciplinary authority came to the conclusion that the worker was guilty for the misconduct. It is clear that the disciplinary authority has passed the punishment order in cursory manner without applying his open mind. As the disciplinary proceedings are in the nature of quasi-judicial proceedings, therefore, the disciplinary authority was under obligation to pass a reasoned and speaking order as to how he came to the conclusion that the worker was guilty of the misconduct for which he was charged.
12. Besides worker has examined himself in support of his case and no witness has come forward on behalf of the management to rebut the testimony of the worker. It is also clear that the worker was doing extra work of dating clerk in addition of his own work i.e. shed clerk, it is quite possible that due to over burden of work some minor mistake might have occurred and there is no allegation that the worker at any point of time tried to obtain any benefit of his own from the party before releasing the scooter.
13. From the punishment order it also reveals that the same has been passed in contravention of the mandatory provision of Rule 47.26 read with Railway Board's letter dated 24.09.02 (supra). Therefore, at any rate the punishment order and appellate order cannot be sustained in the eye of law which are liable to be set aside and accordingly both these orders are set aside.
14. In view of discussions as above, it is held that the action of the management of NCR Allahabad in imposing the penalty of stoppage of one increment with effect from 01.07./04 to Sri Gulab Chandra Gupta Parcel Supervisor is neither legal nor justified. As a consequence of which worker is entitled for all the consequential benefits as if he had never been awarded any such punishment.
15. Reference is answered accordingly in favor of the worker and against the railway management.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1893.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ सं. 1036/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-41012/147/94-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1893.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 1036/2004) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway and others and their workmen, which was received by the Central Government on 05.09.2016.

[No. L-41012/147/94-IR (B-I)]  
RANBIR SINGH, Section Officer

### ANNEXURE

### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad,  
Dated 15<sup>th</sup> July, 2016

#### Reference: (CGITA) No- 1036/2004

The Chief Engineer (Construction),  
Western Railway,  
Station Building, Kalupur, Ahmedabad.

...First Party

V/s

The General Secretary,  
Western Railway Kamdar Sangh,  
TBZ – 17, Gurunagar, Gandhidham,  
Kutch – 370201.

... Second Party

For the First Party : ShriYogesh C. Rasyaguru  
For the Second Party : None

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/147/94-IR (B-I) dated 17.01.1997 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the action of the management of The Chief Engineer (Construction), Western Railway, Station Building, Kalupur, Ahmedabad in cancelling the evidence of promotion in respect of Shri M.O. Vashistha and promoting his juniors is legal and justified? If not, to what relief the workman is entitled?”

1. The reference dates back to 17.01.1997. The second party submitted the statement of claim Ext. 2 on 15.03.1997 along with the 5 documents vide list Ext. 3. The First party The Chief Engineer (Construction), Western Railway, Station Building, Kalupur, Ahmedabad, submitted the vakalatpatra Ext. 4 and written statement Ext. 7 on 04.09.2001. Since then, the second party has been absent and has not been leading evidence.
2. Thus, in the said circumstances, the reference is liable to be dismissed. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer



नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1894.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ सं. 42/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-41012/65/2011-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1894.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway and others and their workmen, which was received by the Central Government on 05.09.2016.

[No. L-41012/65/2011-IR (B-I)]

RANBIR SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad,  
Dated 15<sup>th</sup> July, 2016

**Reference: (CGITA) No- 42/2012**

1. The Divisional Railway Manager,  
Western Railway, Near Chamunda Bridge,  
Asarwa, Ahmedabad.
2. The Sr. Section Engineer,  
Western Railway, Kalupur Railway Station,  
Ahmedabad.

...First Party

**V/s**

Shri Vijay Chunnilal Solanki,  
Harijanvas, Behind Majestic Talkies,  
Dabhoi, Tal. & Distt. Vadodara,  
Vadodara.

...Second Party

For the First Party : None

For the Second Party : Shri R. S. Sisodia

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/65/2011-IR (B-I) dated 30.01.2012 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of Divisional Railway Manager, Western Railway, Ahmedabad in terminating the service of Shri Vijay Chunnilal Solanki Ex. Safaiwala w.e.f. 13.06.2006 is legal and justified? To what relief the workman is entitled?”

1. The reference dates back to 30.01.2012. The second party submitted the vakalatpatra Ext. 5 and statement of claim Ext. 6 on 10.05.2002. The first party Divisional Railway Manager, Western Railway, Ahmedabad was served by registered post on 30.04.2012/10.05.2012 but since then the first party did not submit the vakalatpatra as well as written statement. This tribunal also issued a notice Ext. 4 to the first party no. 2 Sr. Section Engineer, Western Railway, Kalupur Railway Station, Ahmedabad but the same was received as unserved. Therefore on 04.03.2016, the reference was ordered to proceed ex-parte against the first party.
2. The second party on 14.07.2016 submitted his affidavit cum examination chief Ext. 5 wherein he has stated on oath that he belongs to schedule tribe and was appointed on compassionate ground on account of sudden death of his father in the year 1999 as sweeper. He has been bearing the responsibility of his whole family including mother, brother and sisters. His service was spotless but without explaining any valid reason, his services were terminated on 13.06.2006 showing him as absent from 10.07.2004 to 18.07.2005. The departmental enquiry was conducted but proper opportunity was not given to him to cross-examination the witnesses produced in the enquiry. He was also not given the copy of the statement of the witnesses examined in the departmental enquiry. He has further stated that on 10.07.2004, he went to Dabhoi after seeking due permission and leave where he fell ill and underwent medical treatment there under a local doctor. He has further stated that he came to re-join along with the medical certificates but he was denied to join and was subjected to departmental enquiry. In the enquiry, one of the witnesses Shri Chunnilal made the enquiry officer aware regarding his illness.
3. But none appeared today on behalf of the first party to cross-examination the second party workman/witness. Thus, the evidence of the workman second party has not been rebutted by the first party therefore the tribunal has no reason to disbelieve it.
4. Thus, in the said circumstances believing the evidence of the second party workman, I do not find any reason to justify the action taken by the Divisional Railway Manager, Western Railway, Ahmedabad/First party to terminate the services of Shri Vijay Chunnilal Solanki /Second party.
5. Thus, the reference is decided in the favour of the second party / Shri Vijay Chunnilal Solanki and I hold that the action of the management of Divisional Railway Manager, Western Railway, Ahmedabad in terminating the service of Shri Vijay Chunnilal Solanki Ex. Safaiwalaw.e.f. 13.06.2006 is against law and cannot be said to be justified. The second party workman bereinstated with immediate effect with all back wages.
6. The award is passed accordingly.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1895.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ सं. 29/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-41011/114/2009-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1895.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 29/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway and their workmen, received by the Central Government on 05.09.2016.

[No. L-41011/114/2009-IR (B-I)]

RANBIR SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
AHMEDABAD****Present :**

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT-Icum-Labour Court,  
Ahmedabad,  
Dated 15<sup>th</sup> July, 2016

**Reference: (CGITA) No. 29/2011**

The Chief Medical Supdt.,  
Western Railway, Sabarmati,  
Ahmedabad (Gujarat).

...First Party

V/s

The President,  
Western Railway Karmachari Parishad,  
28/B, Narayan Park, Behind Railway Station,  
Ahmedabad (Gujarat).

...Second Party

For the First Party : None

For the Second Party : None

**AWARD**

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/114/2009-IR (B-I) dated 20.04.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

**SCHEDULE**

“Whether the action of the management of The Chief Medical Superintendent, Western Railway, Sabarmati, Ahmedabad in not making reimbursement of medical expenses of Rs. 13950/- to LShri K.K. Ansari incurred by him for treatment of his wife, is legal and justified? To what relief the Union/workman is entitled?”

1. The reference dates back to 20.04.2011. On 15.07.2016, the second party Shri R.S. Sisodia, the President, Western Railway Karmachari Parishad, does not press the reference vide application Ext. 3.
2. Thus, the reference is dismissed as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

का.आ. 1896.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पश्चिम रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अहमदाबाद के पंचाट (संदर्भ सं. 30/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-41011/115/2009-आईआर (बी-1)]

रणबीर सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1896.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 30/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway and their workmen, received by the Central Government on 05.09.2016.

[No. L-41011/115/2009-IR (B-I)]

RANBIR SINGH, Section Officer

### ANNEXURE

#### BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

#### Present :

Pramod Kumar Chaturvedi,  
Presiding Officer, CGIT cum Labour Court,  
Ahmedabad, Dated 15<sup>th</sup> July, 2016

#### Reference: (CGITA) No- 30/2011

1. The Divisional Railway Manager,  
Western Railway, Kothi Compound, Rajkot.
2. The Chief Personnel Officer,  
North Western Railway, Jaipur.

... First Party

V/s

The President,  
Western Railway Karmachari Parishad,  
28/B, Narayan Park, Behind Railway Station, Chandkheda,  
Ahmedabad (Gujarat).

... Second Party

For the First Party : None

For the Second Party : None

### AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/115/2009-IR (B-I) dated 20.04.2011 referred the dispute for adjudication to the Industrial Tribunal, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

### SCHEDULE

“Whether the action of the management of The Divisional Railway Manager, Western Railway, Rajkot, in not granting promotion to Shri Prabhu Singh Khinchi, Section Engineer w.e.f. 01.11.2003, is legal and justified? To what relief the Union/workman is entitled?”

1. The reference dates back to 20.04.2011. On 15.07.2016, the second party Shri R.S. Sisodia, the President, Western Railway Karmachari Parishad, does not press the reference vide application Ext. 3.
2. Thus, the reference is dismissed as not pressed.

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1897.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 89/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-22012/83/2012-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1897.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 89/2012) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Coalfields Ltd., and their workmen, received by the Central Government on 05.09.2016.

[No. L-22012/83/2012-IR (CM-II)]  
RAJENDER SINGH, Section Officer

**ANNEXURE**  
**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,**  
**JABALPUR**  
No. CGIT/LC/R/89/2012

General Secretary,  
Khadan Mazdoor Sangh (AITUC),  
Lal Jhanda, Pathakheda Area,  
District Betul (MP)

...Workman/Union

**Versus**

General Manager,  
Western Coalfields Ltd.,  
PO Pathakheda, Distt. Betul.

...Management

**AWARD**Passed on this 14<sup>th</sup> day of July 2016

1. As per letter dated 24-7-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/83/2012-IR(CM-II). The dispute under reference relates to:  
“Whether the wages of Shri Pancham Suryavanshi is less than that drawn by Shri Kasim Miyan and whether the same is against the National Coal Wage Agreement VI & VII. To what relief he is entitled to?”
2. After receiving reference, notices were issued to the parties. Ist party failed to appear in reference proceeding. Consequently Ist party is proceeded exparte on 19-10-2015.
3. 2<sup>nd</sup> party has filed exparte Written Statement. The contention of the management in Written Statement are Shri Pancham Suryavanshi Gr.B SLU was promoted on 6-8-03 as Sr. SPA (T&S) Grade-A. His basic was fixed Rs.7802/-. On 1-1-2004, claimant was granted increment in Grade B SLU. His pay was fixed Rs.8000/-. Shri Kasim Miyan was granted promotion on 9-11-2004. His pay was fixed at Rs.8400/-. The pay fixed after promotion is protected as per I.I.No.14.
4. 2<sup>nd</sup> party has filed affidavit of evidence of Shri Ishwar Das supporting contentions in Written Statement. As the workman has not filed statement of claim, he is proceeded exparte. The dispute under reference could not be decided on merit.
5. In the result No Dispute Award is passed in the matter.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1898.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एसईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 12/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-22012/61/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1898.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 12/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of South Eastern Coalfields Limited, and their workmen, received by the Central Government on 05.09.2016.

[No. L-22012/61/2004-IR (CM-II)]  
RAJENDER SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,  
JABALPUR**

No. CGIT/LC/R/12/2005

General Secretary,  
Bhartiya Koyala Khadan Mazdoor Sangh (BMS),  
Johilla Area,  
PO Nowrozabad, Distt. Umaria (MP)

...Workman/Union

**Versus**

Chief General Manager,  
SECL, Johilla Area,  
PO Nowrozabad,  
Distt. Umaria (MP)

...Management

**AWARD**Passed on this 15<sup>th</sup> day of July 2016

- As per letter dated 19-1-2005 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/61/2004-IR(CM-II). The dispute under reference relates to:  
  
“Whether the action of the management of Chief General Manager, Johilla area of SECL, PO Nowrozabad, Distt. Umaria not giving promotion to Kamta Prasad and 6 other mechanical Fitter Cat V to mechanical Fitter Cat VI and promoting Dilshad Khan Turner Cat-VI changing his post to mechanical fitter and appointing on said post is legal and justified? If not, to what relief the workmen are entitled?”
- After receiving reference, notices were issued to the parties. Ist party Secretary of Union filed statement of claim at Page 2/1 to 2/3. Case of Ist party Union is that post of six employees Kamta Prasad Verma, Dinesh Tiwari, Nandilal Gupta, Brijesh Tiwari, K.L.Rohit, raj Kumar Gautam and Raj Bhan Bhargawa are illegally changed by the management of 2<sup>nd</sup> party. That 2<sup>nd</sup> party No.2 Dilshad Khan is turner. All the six workmen (Ist party) are placed from Cat-V to IV by the management. That 2<sup>nd</sup> party No.2 Dilshad Khan was working as a turner. The line of promotion of mechanical fitter Cat VI starts from Helper Category II. The line of promotion for cadre of turner is different. 2<sup>nd</sup> party No.2 Dilshad is designated as Mechanical fitter Cat VI contrary to the cadre scheme. That post of mechanical fitter was lying vacant. The order of promotion was not passed from post of Cat-IV to V and form the post of Cat-V to VI mechanical fitters by the management. Despite grievances were raised , no order was passed by the management. The line of promotion has been changed pf 2nd party No.2. He is imported to other category and promoted instead of Ist party workman. That Ist party workman got notional promotion after completing 3 years during existing category. They are placed from Cat-V to IV in lower category. It is contrary to the rules that promotion has been granted in higher category as per Agreement NCWA-VI by management is discriminatory and unfair. The promotional post of category of Ist party workman is snatched contrary to the cadre scheme. The nature of job of mechanical fitter and turner is different. They form different categories for purpose of promotion. The rule doesnot authorise to import person in different category and grant him promotion ignoring seniority of other categories. On above contentions, Ist party prays that promotion of 2<sup>nd</sup> party No.2 to CatVI be set-aside. Ist party also prays direction that they maybe promoted from Mechanical Fitter Cat-V to Mechanical Fitter Cat-VI.
- 2<sup>nd</sup> party management filed written Statement at Page 6/1 to 6/5 opposing claim of Ist party workman. 2<sup>nd</sup> party raised preliminary objection that the dispute is in respect of 7 workmen. However names of those workmen except Kamta Prasad are not given in the reference therefore reference is not capable for adjudication. That dispute raised by General Secretary of BKKMS was discussed with Union. The Union had given consent w.r.t. change of cadre of Dilshad Khan cadre of Dilshad Khan was changed with consent of Union. Subsequently Union raised dispute is not tenable.
- 2<sup>nd</sup> party further submits that Kamta Prasad and 6 others are working as Fitter Category IV (placed in Cat-V) in underground of Pali Colliery, Johilla Area. That service conditions of employees are governed by NCWA II No.32 is applicable. Verbatim of II 32 has been reproduced. That existing ITI Personnel who have completed 3 years in the existing grade as on 31-12-99 will be notionally placed in next higher category w.e.f. 1-1-2000 but the financial benefit will accrue w.e.f. 1-1-01 and this will be personal to them as one time arrangement. That Director Personnel SECL Hqr issued circular dated 31-12-02 giving clarification that this should also be noted

that this placement will not come in the way of promotion. The incumbent may be promoted from the original post to the higher grade in which he will get the benefit of fitment as is available under normal promotion rule. This will depend on vacancy and subject to vacancy. That Dilshad was working as turner, he was given promotion as turner Cat-IV from 9-12-2000. He was working under control of Shri N.P.Singh Supt. Engineer. Due to exigency of work, the management has taken work from Dilshad Khan time to time of Fitter. Dilshad applied for change of cadre. As the change of cadre of Dilshad will not affect carrier growth of other employees, the Competent Authority has considered his case along with other employees by common order dated 22-2-03. The cadre of Shri Dilshad was changed from Turner Cat VI to Mechanical Cat VI. BMS Union has endorsed no objection on the common application submitted by Dilshad and other co-workers. That Dilshad was performing job of fitter, his designation was changed from turner to fitter in same pay. It was not promotion neither his category was upgraded nor pay was enhanced. That as per sanctioned manpower, Dilshad and two others for change of designation was counter changed by functional Union representation including representative of BKKMS Union. It is denied that category of Kamta Prasad and other six workers is changed. There was no promotion of Shri Dilshad. His cadre from Turner to Fitter Category was changed into administrative requirement. That promotion depends on recommendation of DPC subject to availability of sanctioned post and administrative requirement. It is denied that line of promotion has been changed of Dilshad Khan. The change of his cadre has no effect on carrier growth of workman. The claimants were working as fitter Cat-IV (Placed in Cat-V) under I.I.No.32. Dilshad Khan was working in Category VI. On such contentions, 2<sup>nd</sup> party prays that reference be answered in its favour.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Chief General Manager, Johilla area of SECL, PO Nowrozabad, Distt. Umaria not giving promotion to Kamta Prasad and 6 other mechanical Fitter Cat V to mechanical Fitter Cat VI and promoting Dilshad Khan Turner Cat-VI changing his post to mechanical fitter and appointing on said post is legal and justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

### REASONS

6. Notice dated 21-1-2006 issued to 2<sup>nd</sup> party No.2 Dilshad Khan but he remained absent and failed to participate in reference proceeding. The term of reference pertains to change of category of Dilshad Khan to fitter Cat-VI and denial of promotion of 1st party workmen. Affidavits of evidence of Raj Kumar Gautam, Dinesh Kumar Tiwari, Brajesh Tiwari, Nandlal Gupta are filed but they have not appeared for their cross examination. Kamta Prasad filed affidavit of his evidence supporting his contentions in statement of claim that category of 2<sup>nd</sup> party No.2 Dilshad Khan was changed from Turner to Fitter Cat-VI is discriminatory changing line of promotion. That the management misinterpret the provisions while changing category of 2<sup>nd</sup> party No.2 Dilshad Khan. Thereby management committed illegality and irregularity. In his cross-examination, Kamta Prasad says he passed HSc exam, he was not General Secretary of BMS Union. Dilshad Khan was working as turner. That he was appointed as General Mazdoor. He voluntarily accepted the said post covered in category of mechanical fitter. In April 1988, he was on post of helper. Presently he is working on post of Mechanical Fitter VI. He was unable to tell whether documents 6/7 is the cadre scheme.
7. He further tells that consent given by Union came to his notice subsequently, he orally complained about it. His grievance was not considered by the Union. That he had not received proper promotions in fitter cadre. He complained orally about it.
8. Management's witness I.G.Tulsidhara Kurup filed affidavit of his evidence supporting most of the contentions in Written Statement filed by the management. That Dilshad Khan was working as Turner, he was given promotion as turner Cat-IV from 9-12-2000. He was working under control of Suptd. Engineer. Due to exigency of work, management has taken work of fitter from Dilshad Khan. Dilshad submitted application for change of cadre from turner to fitter alongwith other employees. His cadre was changed from Turner Cat VI to Mechanical Fitter Cat-VI. The Union had given no objection. As per sanctioned man power, Shri Dilshad and two others for change of designation was also countersigned by functioning Trade Union Representative. Management's witness in his cross says clarification for post of Fitter Mechanical is candidate should be literate. Post of Mechanical Fitter is Separate cadre than the turner cadre. He denies that Dilshad Khan Turner was promoted as Mechanical Fitter Cat-VI. That there are no rules for promotion of turner to fitter. Dilshad was Turner Cat-VI, he was converted to Cat-VI Fitter. There is no rule or provision for conversion of turner to fitter. From evidence of management's witness, it is clear that there is no rule for conversion of turner VI to Mechanical Fitter VI. The evidence of management's witness shows that Union had given consent for changing Turner VI of Dilshad to Mechanical Fitter Cat-VI. When consent is given and there are no rules for such conversion, the consent given for conversion

in violation of the rules would be void and illegal. Kamta Prasad and 6 others were holding post of Mechanical Fitter Cat-IV and they were placed in Category V. In normal course, when Dilshad Khan was converted to Mechanical Fitter Cat-VI, certainly the promotional chances of claimants Ist party would be adversely affected. The conversion of Dilshad from Turner Category VI to Mechanical Fitter Cat-VI in violation of rule is illegal. For above reasons, I record my finding in Point No.1 in Negative.

9. In the result, award is passed as under:-

- (1) The action of the management is illegal.
- (2) Conversion of Shri Dilshad Khan from Turner Category VI to Mechanical Fitter is set aside. 2<sup>nd</sup> party management is directed to consider the matter of promotion to Fitter Cat-VI following cadre scheme.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1899.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार ईसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, आसनसोल के पंचाट (संदर्भ सं. 102/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-22012/462/2004-आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1899.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 102/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Asansol as shown in the Annexure, in the Industrial Dispute between the management of Bansara Colliery of M/s. ECL, and their workmen, received by the Central Government on 05.09.2016.

[No. L-22012/462/2004-IR (CM-II)]

RAJENDER SINGH, Section Officer

#### ANNEXURE

#### BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ASANSOL

**PRESENT:** Sri Pramod Kumar Mishra, Presiding Officer

#### REFERENCE No. 102 OF 2005

**PARTIES:** The management of Bansara Colliery of M/s. E.C.L.

**Vs.**

Sri Lakhan Kora

#### **REPRESENTATIVES:**

For the management : Sri P. K. Das, Ld. Advocate

For the union (Workman) : Sri S. K. Pandey, Union Representative

INDUSTRY: COAL STATE : WEST BENGAL

Dated : 12.08.2016

#### **AWARD**

In exercise of powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), Govt. of India through the Ministry of Labour vide its letter No. L-22012/462/2004-IR(CM-II) dated 01.09.2005 has been pleased to refer the following dispute for adjudication by this Tribunal.



**SCHEDULE**

“Whether the action of the management of Bansra Colliery of M/s. Eastern Coalfields Limited in dismissing Sri. Lakhan Kora from services is legal and justified? If not, to what relief the individual is entitled? ”

1. Having received the Order **NO. L-22012/462/2004-IR(CM-II)** dated 01.09.2005 of the above said reference from the Govt. of India, Ministry of Labour, New Delhi for adjudication of the dispute, a reference case No. **102 of 2005** was registered on 09.09.2005. Accordingly an order to that effect was passed to issue notices through the registered post to the parties concerned, directing them to appear in the court, on the date fixed and to file their written statements along with the relevant documents and a list of witnesses in support of their claims. In pursuance of the said order notices by the registered post were sent to the parties concerned. Both the parties appeared in the Tribunal, through their representative.
2. The workman Sri Lakhan Kora has pleaded in his written statement, in brief, that he was in employment of the company as Under Ground Loader at Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited. He fell sick on 19.03.2003 for which he was treated by private practitioner. He was declared fit on and from 17.04.2003. He reported before the management for resumption of duty but he was not allowed. He has stated that he was Charge Sheeted vide Charge Sheet no. ECL/BC/PER/03-04/1194 dated 23.06.2003 for alleged misconduct of unauthorized absence from duty. He submitted his treatment papers before the enquiry officer and participated in enquiry proceeding but he was not given proper opportunity to defend his case. The Enquiry Officer was highly prejudice and biased against him. Even points which were not raised by management representative were incorporated by Enquiry Officer. The findings of Enquiry Officer were not found on records. The management did not follow the principles of natural justice and without giving him opportunity to prove his innocence conducted the departmental enquiry and passed the dismissal order. Even not a single witness was examined by the Enquiry Officer to prove the charge. The dismissal of Sri Lakhan Kora from service of the company is illegal and unjustified. The workman belongs to downtrodden community. He is sitting idle without any job and his whole family is dying without meal. The workman has prayed that the management of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited be directed to reinstate the workman with payment of full back wages from the date of dismissal with all consequential benefits.
3. The Agent of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited has stated, in brief, in his written statement that ex-workman was charge sheeted by the management for his act of misconduct as mentioned in the Charge Sheet as per the provision of standing order applicable to the establishment vide Charge Sheet no. ECL/BC/PER/03-04/1194 dated 23.06.2003 under Clause - 26.29 and Clause - 26.23 for the period of absence from 19.03.2003 to 23.06.2003. The ex-workman failed to submit satisfactory explanation to the Charge Sheet and as such domestic enquiry was held to the said charges by the Enquiry Officer duly appointed by the competent authority. The Enquiry Officer issued due notices of enquiry and reasonable opportunity was given to the ex-workman to defend his case in accordance with the principles of natural justice. The Enquiry Officer after conclusion of enquiry proceeding submitted his finding by holding the ex-workman to be guilty of charges levelled against him. The ex-workman was previously imposed punishment on the ground of habitual absence during his tenure of service which indicates habitual absenteeism. As per record prior to dismissal he was present only 91 days in 2000, 153 days in 2001 and 77 days in 2002. The disciplinary authority after careful consideration of the Charge Sheet, Enquiry Proceeding, Enquiry Report and other relevant papers awarded an Order of Dismissal of ex-workman considering the gravity of misconduct committed by the ex-workman. Order of punishment of dismissal is justified. The Workman is not entitled to any relief.
4. The union has filed following documentary evidences (i) Copy of the Charge Sheet, (ii) Copy of the Medical Treatment Paper, (iii) Copy of the Enquiry Proceeding and Findings, (iv) Copy of the Dismissal Order.

Sri Lakhan Kora has filed affidavit in his evidence.

The Agent of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited has not filed any oral or documentary evidence.

5. I have heard Sri S. K. Pandey, learned Union representative on behalf of workman and Sri P. K. Das, learned Advocate on behalf of New Kenda Colliery under Kenda Area of M/s. Eastern Coalfields Limited.
6. Sri S. K. Pandey, learned union representative appearing on behalf workman has argued that enquiry has been conducted without compliance of natural justice. The workman was absent due to his sickness. He filed his medical papers in enquiry proceeding to manager. Manager handed over the medical paper to Enquiry officer. But it was not considered. Even workman was not permitted to put his defence evidence. Workman was absent from duty from 19.03.2003 to 16.04.2003. He was absent merely for a period for 29 days. For mere absence of 27 days the punishment of dismissal is quite disproportionate and illegal. Workman was not issued 2<sup>nd</sup> Show Cause Notice. He has argued that the workman is physically handicapped during course of employment.

On the other hand Sri P. K. Das, learned advocate of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited has argued that the enquiry has been conducted in compliance of natural justice, workman has

participated in enquiry proceeding. The workman has been punished as keeping view of the principles of natural justice. Punishment of dismissal is justified.

7. It is not disputed that Sri Lakhan Kora, the delinquent workman was in employment of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited as Under Ground Loader. It is also not disputed that he has been dismissed from service of company due to his absence of duty. As per allegation of workman his absence was due to his sickness. Enquiry was conducted in violation of principles of natural justice which has been denied by agent of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited. The workman was charge sheeted under Clause - 26.23 and Clause - 26.29 of Certified Standing Order applicable to Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited. Certified Standing Order prescribes misconduct for unauthorized absence. The Clause - 26.23 and Clause - 26.29 of Certified Standing Order are as follows:

“26.23 : *Habitual late attendance or habitual absence from duty without sufficient cause.*

26.29 : *Sleeping on duty.*”

8. As per allegation of written statement of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited the delinquent workman was Charge Sheeted for his unauthorized absence from his duty. The enquiry has been conducted by Enquiry Officer against delinquent workman against his unauthorized absence from duty without sufficient cause. There is no allegation on the workman for “*sleeping on duty*” but workman has been Charge Sheeted also under Clause - 26.29 for sleeping on duty. The Charge Sheet has been drafted in mechanical manner without application of mind. It is needless to say that Charge Sheet is the charter of disciplinary action. The domestic enquiry commences with the service of the Charge Sheet.
9. The enquiry proceeding reflects that Sri Lakhan Kora has participated in the enquiry. His thumb impression is present in the enquiry proceeding. Sri Prem Sankar Singh, M.R. recorded his statement on 11.11.2003. But Enquiry Officer did not afforded opportunity of cross-examination to the concerned workman Sri Lakhan Kora. The opportunity of cross-examination from management witness is valuable legal right of charge sheeted workman, which can never be dispensed with. The Enquiry Officer has not recorded any reason for denial of opportunity of cross-examination to the delinquent. It is relevant to mention that enquiry against delinquent has not been conducted ex-parte. He has participated in the enquiry proceeding. He is present in the enquiry proceeding on the concerned dates. He must have been provided opportunity of cross-examination. If opportunity of cross-examination is not afforded to delinquent workman then examination-in-chief of management witness is inadmissible as per Evidence Act. Merely because the rules and procedures do not apply to domestic enquiry and the employer and workman are subject to rules laid down in the Standing Order does not mean that rules of natural justice and fair play are to be ignored. The rules of natural justice are matters not of form but of substance. If the enquiry is proceeded in a slipshod way in manner which indicates that the Enquiry Officer was proceeding on the basis of standard of proof which is wrong in law and not consistent with the principles of natural justice, then in that event the enquiry proceeding will be vitiated. The resultant effect of the violation of natural justice will result in sufferance and prejudice to the delinquent.
10. Sri Prem Sankar Singh, M.R. has stated in his evidence that Sri Lakhan Kora absented himself from duty from 19.03.2003 without any information and prior permission of the competent authority. Sri Lakhan Kora has submitted a Medical Certificate of private doctor from 19.03.2003 to 06.09.2003 and due to reason he was unable to join his duty. But he neither takes treatment at company's hospital nor did he refer to any hospital from our end and also he did not inform the management about his sickness. Sri Lakhan Kora was asked why he failed to inform the management about his sickness. Sri Lakhan Kora replied that since he was sick and not in a position to move outside, so he did not inform the management. The management representative has not filed any copy of attendance register regarding exact period of absence. The Enquiry Officer has not recorded any finding that the delinquent workman, Sri Lakhan Kora was absent from duty was willful or under compelling circumstances. Absence from duty of any workman may be or may not be willful. Medical Papers issued by private doctor can be disbelieved by Enquiry Officer if there grounds to disbelieve. But in that case Enquiry Officer must reach to conclusion that absence from duty was willful. The entire enquiry proceeding was conducted in one day i.e. 11.11.2003. Enquiry commenced on 11.11.2003, Statement of Sri Prem Sankar Singh, M.R. was recorded on 11.11.2003. The opportunity of cross-examination was not afforded to delinquent. Statement of Sri Lakhan Kora was recorded on 11.11.2003 and even Enquiry Officer recorded his findings on 11.11.2003 without affording opportunity of defence evidence to the delinquent. The Enquiry Officer is a quasi-judicial authority and in a position of an independent adjudicator. He is not supposed to be representative of department. He is supposed to function as independent adjudicator providing all reasonable opportunity to delinquent workman to put his defence. Denial of opportunity to delinquent workman to defend himself is utter violation of principles of natural justice.
11. Hon'ble Apex Court in **State of U. P. & another V/s C. S. Sharma, AIR 1968 SC 158** has held that:  
 “If no opportunity is given to the delinquent to lead evidence, it was sufficient to vitiate the whole proceeding.”

In the light of law propounded by the hon'ble Apex Court the entire enquiry proceeding is vitiated.

12. From perusal of enquiry proceeding it is apparent that the delinquent workman, Sri Lakhan Kora was present in enquiry proceeding and he participated in the enquiry proceeding. His thumb impression is present on each page of enquiry proceeding. But contrary to this the dismissing authority, in dismissal order of Sri Lakhan Kora vide Ref. No. A.KNT/P&IR/26B/7428 dated 19/20.12.2003 addressed to Sri Lakhan Kora has stated :

*“Reference to the Charge Sheet mentioned above issued to you, an enquiry was conducted wherein you failed to participate in the enquiry, though you were given full opportunity to defend yourself.”*

It indicates that the dismissing authority the Chief General Manager of Kunustoria Area of M/s. Eastern Coalfields Limited even did not care to peruse enquiry proceeding and enquiry report before passing dismissal order. The dismissing authority is required to apply his mind on the material placed on record. The dismissing authority can not refuse to consider the relevant facts. He can not accept the testimony of witnesses based on the basis of surmises and conjectures. Even before passing dismissal order neither delinquent workman was supplied with the copies of enquiry proceeding, enquiry report and call upon to submit his explanation in response to 2<sup>nd</sup> Show Cause Notice before passing Order of Dismissal. The contention of workman that 2<sup>nd</sup> Show Cause Notice was not issued before passing dismissal order is conformed by perusal of Order of Dismissal. In dismissal order itself there is no recital of issuance of 2<sup>nd</sup> Show Cause Notice to the delinquent workman before passing Order of Dismissal, which is mandatory in law.

13. Hon'ble Apex Court in **Managing Director of ECIL, Hyderabad and others, AIR 1994 SC 1074 (supra)** has held that:

*“When the Enquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Enquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him. That right is a part of the employee's right to defend himself against the charges leveled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”*

14. Articles 14, 15, 19, 21 and 23 of the Constitution of India as well as the directive principles of The State Policy provide a better and strong frame work for the protection of interest of the labour class. Employer has to keep in mind that while disciplinary proceeding is going on against a charge sheeted employee it should not violate any of the sacred provisions of the Constitution of India. Being the supreme law of the land and protector of the interest of the labour class, provisions of labour and Industrial Laws have to comply with the provisions of the Constitution of India.
15. From perusal of material available on record it is manifest that the Enquiry Officer has conducted the enquiry proceeding, in utter violation of principles of natural justice, denying the right of cross-examination and opportunity of defence evidence to delinquent. Even the punishing authority has passed the dismissal order without following the due procedure of law. Several factors are required to be considered before passing order of punishment. The misconduct and gravity of charge, nature of duties, work place, rights of delinquent in enquiry proceeding as well as validity of enquiry proceeding etc., failure to take into account these materials before awarding the punishment will be fatal to the order of punishment. The Order of Dismissal which is a major punishment. Without a valid, lawful, un-vitiated and proper enquiry the punishment of dismissal of any delinquent workman for mere absence of few months is illegal, unjustified and quite disproportionate to the unproved guilt of the delinquent workman which must be modified.
16. The workman has stated in Para- 10 of his written statement that he is sitting idle without any job and his whole family is dying without any food. This fact has not been rebutted by the Agent of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited. The workman Sri Lakhan Kora has stated in Para- 7 of his affidavit filed in his oral evidence that his pecuniary condition is measurable. It is apparent from the fact and evidence of the delinquent workman that he was not anywhere gainfully employed during period of dismissal i.e. from 19/20.12.2003. It indicates that there is no possibility of getting alternate employment anywhere else.

Hon'ble Apex Court in **Pawan Kumar Agarwala v/s General Manager-II & Appointing Authority State Bank of India & Others, 2016 (148) FLR 865** has relied on **Deepali Gundu Surwase V/s. Kranti Junior Adhyapak Mahavidyalaya and Others, (2013) 10 SCC 324** :

*“The case in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and / or the principles of natural justice or is guilty of victimizing the employee or workman, then the Court or Tribunal concerned will be fully justified in directing payment of full back wages.”*

17. Hon'ble Calcutta High Court in **M/s. Hotel Airport Ashok (Kolkata Hotel Private Limited) V/s. Industrial Tribunal and others, 2016 (148) FLR 1072** has held that :

*“In view of the domestic enquiry being set aside by the impugned order of the Industrial Tribunal, the management will reverse all decisions taken pursuant to and emanating out of such domestic enquiry against the employee forthwith. In doing so, the management will ensure that the employee is not prejudiced either in course of his employment or otherwise so far as monetary benefits as well as any other benefits receivable by such employee is concerned. The management will treat the employee as if the impugned disciplinary proceeding was not initiated against him.”*

18. In view of hon'ble Apex Court and hon'ble Calcutta High Court the delinquent workman Sri Lakhan Kora is entitled for re-instatement with full back wages with all service benefits including promotions, increments, fixation of seniority, etc. which could have been accrued to him had he been in service of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited. The argument of Sri S. K. Pandey, that the delinquent workman was physically handicapped during course of employment, has not been denied by learned counsel of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited. Though, neither party to the reference has pleaded in their written statement that physical disability of Sri Lakhan Kora was during course of employment. It is admitted fact by both the parties to the reference that Sri Lakhan Kora was in employment of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited before dismissal. Two fact situations may arise. Firstly, if he was already physically handicapped when he joined the employment in Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited, the fact of his physical disability had already been considered by Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited before inducting him in employment. Therefore there should be no hurdle in his reinstatement. Secondly, if he was physically handicapped during course of employment then he has better right because his physical disability is during course of employment in Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited. But it should be kept in mind that M/s. Eastern Coalfields Limited is a public sector undertaking. Due to physical disability a public sector undertaking should not suffer. The delinquent may be reinstated on some alternative suitable post.
19. In the light of above discussion the action of management of Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited in dismissing Sri Lakhan Kora from service is illegal and unjustified. Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited is directed to reinstate Sri Lakhan Kora with full back wages from date of dismissal till his reinstatement. It is further directed that Sri Lakhan Kora will be entitled to get all consequential service benefits from date of dismissal onwards eg. promotions, increments, fixation of seniority, etc. Bansra Colliery under Kunustoria Area of M/s. Eastern Coalfields Limited will be at liberty to reinstate Sri Lakhan Kora at any suitable alternate post. Sri Lakhan Kora will be imposed punishment of stoppage of 2 (Two) increment without cumulative effect.

### ORDER

Let an “Award” be and the same is passed as per above discussion. Send the copies of the order to the Govt. of India, Ministry of Labour, New Delhi for information and needful. The reference is accordingly disposed of.

PRAMOD KUMAR MISHRA, Presiding Officer

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1900.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मकार के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 145/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1900.**— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 145/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of SCCL and their workmen, received by the Central Government on 05.09.2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD****Present:** Sri Muralidhar Pradhan, Presiding OfficerDated the 24<sup>th</sup> day of June, 2016**INDUSTRIAL DISPUTE L.C. No. 145/2006****Between:**

Sri Thummu Narasinga Rao,  
S/o Narsaiah, C/o Smt. A. Sarojana, Advocate,  
Flat No. G7, Ground Floor,  
Rajeshwari Gayatri Sadan,  
Opp: Badruka Jr. College for Girls,  
Kachiguda, Hyderabad.

...Petitioner

**AND**

1. The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Kothagudem Area, Kothagudem,  
Khammam District.
2. The Superintendent of Mines,  
PVK-5 Incline,  
M/s. Singareni Collieries Company Ltd.,  
Kothagudem Area, Khammam District.

...Respondents

**Appearances:**

For the Petitioner : M/s. A. Sarojana &amp; K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma &amp; Vijaya Laxmi Panguluri, Advocates

**AWARD**

This is a petition filed under Sec.2A(2) of the Industrial Disputes Act, 1947 by Sri Thummu Narasinga Rao, the workman, who worked as Fitter at PVK-5 Incline, M/s. Singareni Collieries Company Ltd., Kothagudem against the management for his reinstatement into the service of the management with full back wages and other relevant benefits or consequential benefits, after setting aside his termination.

2. The case of the Petitioner is that he was appointed in the 1<sup>st</sup> Respondent company during the year 1988 and was posted to work in the office of the 2<sup>nd</sup> Respondent. While so, he was issued with a chargesheet dated 18.2.2004 for his unauthorized absence. The enquiry was biasedly conducted on the basis of charge sheet without giving any opportunity to the Petitioner. The Enquiry Officer on the basis of lop sided enquiry erroneously held the charge as proved against him. On the basis of erroneous findings of the Enquiry Officer, the Petitioner was dismissed from his service as per the office order dated 5.1.2005. As such, the dismissal order passed against the Petitioner as per the office order dated 5.1.2005 is entirely illegal, arbitrary, violative of principles of natural justice.

3. The case of the Respondent as stated in their counter statement is that their company operates some mines, of which the Central Government is the appropriate Government. In accordance with the averments of the Petitioner, admittedly the Petitioner was appointed on 23.9.1998. In fact the charge sheet dated 18.2.2004 was issued to the Petitioner for his misconduct of unauthorized absenteeism under the company's Standing Order No.25.25. Concerning his habitual absence from duty without any justification for the year 2003, in which he has absented for 211 days. The Petitioner has submitted his explanation on 29.3.2004. Later, an enquiry was initiated. The Petitioner has fully participated in the enquiry, in which he was given full and fair opportunity for his deeds/grievance. The Enquiry Officer held the charges levelled against the Petitioner as proved. As such, the Respondent company was constrained to dismiss the Petitioner for unauthorized absenteeism vide order dated 5.1.2005.

4. In the instant case, as per order dated 24.2.2009, the validity of the domestic enquiry was not challenged on behalf of the Petitioner and it was held as legal and valid.

5. During the midst of hearing of the case at the consent of both the parties, the present case is placed before the Chairman, Lok Adalat Bench on 24<sup>th</sup> day of June, 2016. Wherein a settlement was arrived between the parties. The

Respondent management has been directed to take back the Petitioner workman to duty as Badli Worker (Underground) afresh. In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in presence of the members of the Lok Adalat Bench and the order so passed has been annexed to this award as it is.

6. In view the settlement arrived before Lok Adalat Bench, a no dispute award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal and corrected by me on this the 24<sup>th</sup> day of June, 2016.

MURALIDHAR PRADHAN, Presiding Officer

#### Appendix of evidence

Witnesses examined for the  
Petitioner

Witnesses examined for the  
Respondent

NIL

NIL

#### Documents marked for the Petitioner

NIL

#### Documents marked for the Respondent

NIL

#### IN THE LOK ADALAT

(For settlement of cases relating to CGIT-cum-Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

Friday the 24<sup>th</sup> day of June, Two Thousand and Sixteen

**PRESENT :** 1. Sri Muralidhar Pradhan : Presiding Officer  
2. Sri C. Niranjana Rao : Member  
3. Sri B. G. Ravindra Reddy : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22.8.2006)

#### In the matter of case No. LCID No. 145/2006/PLAC No. 3/2016

(On the file of CGIT cum-Labour-Court at Hyderabad)

#### Between :

Thumma Narsinga Rao (EC No. 0277851), S/o Narsaiah,  
aged about 52 years, Ex-Fitter at PVK-5 Incline,  
Singareni Collieries Company Limited,  
Kothagudem Area, Khammam District.

...Petitioner

#### AND

1. The Singareni Collieries Company Ltd.,  
rep. by its General Manager,  
Kothagudem Area, Kothagudem, Khammam District.
2. The Superintendent of Mines,  
PVK-5 Incline, Singareni Collieries Company Ltd.,  
Kothagudem Area, Khammam District.

...Respondents

This case is coming up before the Lok Adalat on 24.06.2016 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri P.A.V.V.S. Sarma. On a perusal of the case record, after considering and hearing both sides and with the consent of both sides, the Lok Adalat has arrived at the following settlement and delivered the following :

**AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987**

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Worker (Underground) without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Worker (Underground) afresh and need not be posted to the same place, where the workmen was last employed.
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays, etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Worker ( Underground) afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Signature of Applicant (s)

Signature of Respondent (s)

Signature of Counsel for Applicant (s)

Signature of Counsel for Respondent (s)

Signature of Presiding Officer and Members of the Bench

1.

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**Note :** This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA. Act. 1987.

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1901.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 121/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सी -II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1901.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 121/2007) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of SCCL and their workmen, received by the Central Government on 05.09.2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT  
HYDERABAD****Present:** Sri Muralidhar Pradhan, Presiding OfficerDated the 24<sup>th</sup> day of June, 2016**INDUSTRIAL DISPUTE L.C. No. 121/2007****Between:**

Sri Md. Abid Pasha,  
S/o Raj Mohammad,  
C/o Smt. A. Sarojana, Advocate,  
Flat No. G7, Ground Floor,  
Rajeshwari Gayatri Sadan,  
Opp: Badruka Jr. College for Girls,  
Kachiguda, Hyderabad.

... Petitioner

**AND**

1. The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Bhupalpally, Warangal District.
2. The Superintendent of Mines, KTK-3 Incline,  
M/s. Singareni Collieries Company Ltd.,  
Bhupalpally, Warangal District.

... Respondents

**Appearances:**

For the Petitioner : M/s. A. Sarojana &amp; K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma &amp; Vijaya Laxmi Panguluri, Advocates

**AWARD**

This is a petition filed under Sec.2A(2) of the Industrial Disputes Act, 1947 by Sri Md. Abid Pasha, the workman, who worked as a Ex. Shot Firer, Grade-C, KTK-3 Incline, M/s. Singareni Collieries Company Ltd., Bhupalpally against the management for his reinstatement into the service of the management with full back wages and other relevant benefits or consequential benefits, after setting aside his termination.

2. The case of the Petitioner is that he was appointed as badli filler on 1.9.1995 and got promoted as Coal Filler on 1.12.2000 and further he was promoted as Shot Firer on 10.10.2004. But he was issued with a charge sheet dated 25.8.2006 for his unauthorized absence following an enquiry. The enquiry was biasedly conducted on the basis of charge sheet without giving any opportunity to the Petitioner. The Enquiry Officer on the basis of lop sided enquiry erroneously held the charge as proved against him. On the basis of erroneous findings of the Enquiry Officer, the Petitioner was dismissed from his service as per the office order dated 14/21.6.2007. As such, the dismissal order passed against the Petitioner as per the office order dated 14/21.6.2007 is entirely illegal, arbitrary, violative of principles of natural justice.

3. The case of the Respondent as stated in their counter statement is that their company operates some mines, of which the Central Government is the appropriate Government. In accordance with the averments of the Petitioner, admittedly the Petitioner was appointed on 30.8.1995 and was regularized as coal filler on 1.12.2000 and was promoted as Shot Firer-C grade w.e.f. 14.10.2004 and was transferred to Bhupalpalli on 1.12.2000. In fact charge sheet dated 25.8.2006 was issued to the Petitioner for misconduct of his unauthorized absenteeism under the company's Standing Order No.25.25. Concerning his habitual absence from duty without any justification for the year 2005, in which he put in only 100 musters. The Petitioner has not submitted his explanation within the stipulated time. Later, an enquiry was initiated. The Petitioner has fully participated in the enquiry, in which he was given full and fair opportunity for his deeds/grievance. The Enquiry Officer held the charges levelled against the Petitioner as proved. As such, the Respondent company was constrained to dismiss the Petitioner for unauthorized absenteeism vide order dated 14/21.6.2007.



4. In the instant case, as per order dated 21.1.2010, the validity of the domestic enquiry was not challenged on behalf of the Petitioner and it was held legal and valid.

5. While the case was in the midst of hearing, at the consent of both the parties, it was placed before the Chairman, Lok Adalat Bench on 24<sup>th</sup> day of June, 2016. Wherein a settlement has been arrived between the parties. The Respondent management has been directed to take back the Petitioner workman to duty as Badli Worker (Underground) afresh. In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in presence of the members of the Lok Adalat Bench and the order so passed has been annexed to this award as it is.

6. In view of the settlement arrived before the Lok Adalat Bench, a no dispute award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal and corrected by me on this the 24<sup>th</sup> day of June, 2016.

MURALIDHAR PRADHAN, Presiding Officer

#### Appendix of evidence

Witnesses examined for the	Witnesses examined for the
Petitioner	Respondent
NIL	NIL

#### Documents marked for the Petitioner

NIL

#### Documents marked for the Respondent

NIL

#### IN THE LOK ADALAT

(For settlement of cases relating to CGIT-cum-Labour Court at Hyderabad Under Section 20 of the Legal Services Authorities Act, 1987)

Friday the 24<sup>th</sup> day of June, Two Thousand and Sixteen

**PRESENT :** 1. Sri Muralidhar Pradhan : Presiding Officer  
2. Sri C. Niranjan Rao : Member  
3. Sri B. G. Ravindra Reddy : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No. 186/LSA/2006 dt. 22.8.2006)

#### In the matter of case No. LCID No. 145/2006/PLAC No. 2/2016

(On the file of CGIT cum-Labour-Court at Hyderabad)

#### Between :

Thumma Narsinga Rao (EC No. 0277851), S/o Narsaiah,  
aged about 52 years, Ex-Fitter at PVK-5 Incline,  
Singareni Collieries Company Limited,  
Kothagudem Area, Khammam District.

...Petitioner

#### AND

1. The Singareni Collieries Company Ltd.,  
rep. by its General Manager,  
Kothagudem Area, Kothagudem, Khammam District.  
2. The Superintendent of Mines,  
PVK-5 Incline, Singareni Collieries Company Ltd.,  
Kothagudem Area, Khammam District.

...Respondents

This case is coming up before the Lok Adalat on 24.06.2016 for settlement in the presence of the applicant appearing in person/represented by his counsel Sri K. Vasudeva Reddy and the Respondent too, being present in person/represented by his counsel, Sri P.A.V.V.S. Sarma. On a perusal of the case record, after considering and hearing both sides and with the consent of both sides, the Lok Adalat has arrived at the following settlement and delivered the following :

**AWARD UNDER SECTION 21 OF THE L.S.A. ACT, 1987**

The petitioner had agreed to the following proposals of the Management, as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Worker (Underground) without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Worker (Underground) afresh and need not be posted to the same place, where the workmen was last employed.
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays, etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Worker (Underground) afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Signature of Applicant (s)

Signature of Respondent (s)

Signature of Counsel for Applicant (s)

Signature of Counsel for Respondent (s)

Signature of Presiding Officer and Members of the Bench

1.

2.

3.

**Note :** This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA. Act. 1987.

नई दिल्ली, 5 सितम्बर, 2016

**का.आ. 1902.**—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार एससीसीएल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ सं. 42/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05.09.2016 को प्राप्त हुआ था।

[सं. एल-22013/1/2016-आईआर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 5th September, 2016

**S.O. 1902.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/2006) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure in the Industrial Dispute between the management of SCCL, and their workmen, received by the Central Government on 05.09.2016.

[No. L-22013/1/2016-IR (C-II)]

RAJENDER SINGH, Section Officer

**ANNEXURE****BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT  
HYDERABAD****Present:** Sri Muralidhar Pradhan, Presiding OfficerDated the 4<sup>th</sup> day of June, 2016**INDUSTRIAL DISPUTE L.C. No. 42/2006****Between:**

Sri A. Sadaiah, S/o Ramulu,  
C/o Smt. A. Sarojana, Advocate,  
Flat No. G7, Ground Floor,  
Rajeshwari Gayatri Sadan,  
Opp: Badruka Jr. College for Girls,  
Kachiguda, Hyderabad.

... Petitioner

**AND**

1. The General Manager,  
M/s. Singareni Collieries Company Ltd.,  
Srirampur Area, Srirampur,  
Adilabad District.
2. The Colliery Manager, RK.NT Incline,  
M/s. Singareni Collieries Company Ltd.,  
Srirampur Area, Srirampur,  
Adilabad District.

... Respondents

**Appearances:**

For the Petitioner : M/s. A. Sarojana &amp; K. Vasudeva Reddy, Advocates

For the Respondent : M/s. P.A.V.V.S. Sarma &amp; Vijaya Laxmi Panguluri, Advocates

**AWARD**

This is a petition filed under Sec.2A(2) of the Industrial Disputes Act, 1947 filed by Sri A. Sadaiah, the workman, who worked as a Trammer, RK.NT Incline, M/s. Singareni Collieries Company Ltd., Srirampur Area against the management of M/s. Singareni Collieries Company Ltd., for his reinstatement in the service of the management with full back wages and other relevant benefits or consequential benefits, after setting aside his termination.

2. The case of the Petitioner is that he was appointed as badli filler on 31.3.87 and was confirmed as Trammer in July, 1990. But he was issued with a chargesheet dated 25.3.2003 for his unauthorized absence. The enquiry was biasedly conducted on the basis of charge sheet without giving any opportunity to the Petitioner. The Enquiry Officer on the basis of lop sided enquiry erroneously held the charge as proved against him. On the basis of erroneous findings of the Enquiry Officer, the Petitioner was dismissed from his service as per the office order dated 27.10.2004/ 1.11.2004. As such, the dismissal order against the Petitioner as per the office order dated 27.10.2004 is entirely illegal, arbitrary, violative of principles of natural justice.

3. The case of the Respondent as stated in their counter statement is that their company operates some mines, of which the Central Government is the appropriate Government. In accordance with the averments of the Petitioner, admittedly the Petitioner was appointed as Floating Badli Filler on 31.3.1987 and later on he was promoted as Trammer w.e.f. 16.6.1990. In fact the charge sheet dated 25.3.2003 was issued to the Petitioner for misconduct of his unauthorized absenteeism under the company's Standing Order No.25.25. Concerning his habitual absence from duty without any justification for the year 2002, in which he put in only 20 musters. The Petitioner has also submitted his explanation dated 8.4.2003 to the charge sheet. On finding it unsatisfactory, the enquiry was initiated. The Petitioner fully participated in the enquiry, in which he was given full and fair opportunity for his deeds/grievance. The Enquiry Officer held the charges levelled against the Petitioner as proved. As such, the Respondent company was constrained to dismiss the Petitioner for unauthorized absenteeism w.e.f. 1.11.2004 vide order dated 27.10.2004.

4. In the instant case, as per order dated 19.3.2009, the validity of the domestic enquiry was not challenged on behalf of the Petitioner and it was held as legal and valid.

5. In the midst of hearing of the case at the consent of both the parties, the present case is placed before the Chairman, Lok Adalat Bench on 4<sup>th</sup> day of June, 2016. Wherein a settlement was arrived between the parties. The Respondent management has been directed to take back the Petitioner workman to duty as Badli Worker (Underground) afresh. In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in presence of the members of the Lok Adalat Bench and the order so passed has been annexed to this award as it is.

6. In view the settlement arrived before Lok Adalat Bench, a no dispute award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal and corrected by me on this the 4<sup>th</sup> day of June, 2016.

MURALIDHAR PRADHAN, Presiding Officer

#### Appendix of evidence

Witnesses examined for the

Witnesses examined for the

Petitioner

Respondent

NIL

NIL

#### Documents marked for the Petitioner

NIL

#### Documents marked for the Respondent

NIL

#### IN THE LOK ADALAT

(For settlement of cases relating to CGIT cum Labour Court at Hyderabad  
Under Section 20 of the Legal Services Authorities Act, 1987)

Saturday the 4<sup>th</sup> day of June, Two Thousand and Sixteen

**PRESENT:** 1. Sri Muralidhar Pradhan : Presiding Officer  
2. Sri C.Niranjan Rao : Member  
3. Sri B.G. Ravindra Reddy : Member

(Constituted U/s 19 of the LSA Act, 1987 by the APSLSA Order ROC No.186/LSA/2006, dt: 22.08.2006)

In the matter of case No. **LCID No. 42/2006 / PLAC No.1/2016**

(On the file of CGIT cum Labour Court at Hyderabad)

#### Between :

Sri A. Sadaiah (EC No. 2029301), S/o Ramulu,  
aged about 40 years, worked as Trammer at RK-NT,  
Singareni Collieries Company Limited,  
Srirampur Area, Srirampur, Adilabad District.

...Petitioner

#### AND

1. The Singareni Collieries Ltd., rep. by its General Manager, Srirampur Area, Srirampur, Adilabad Dist.
2. The Colliery Manager, RK.NT incline, Singareni Collieries Company Ltd., Srirampur Area, Srirampur, Adilabad Dist.

...Respondents

This case is coming up before the Lok Adalat on **04.06.2016** for settlement in the presence of the applicant appearing in person/represented by his counsel Sri **K. Vasudeva Reddy** and the Respondent too, being present in person/represented by his counsel, Sri **P.A.V.V.S. Sarma**. On a perusal of the case record, after considering and hearing both sides and with the consent of both sides, the Lok Adalat has arrived at the following settlement and delivered the following:

**AWARD UNDER SECTION 21 OF THE L.S.A. ACT., 1987**

The Petitioner had agreed to the following proposals of the Management. as the petitioner had put in 100 musters in the two years of the preceding 5 years of dismissal and raised the dispute within three years from the date of dismissal from service. The contents are read over and explained to the petitioner in his language and agreed by him by signing the same.

- a. The petitioner workman agreed to treat his appointment as fresh appointment as Badli Coal Filler without back wages and continuity of service subject to medical fitness by Company Medical Board.
- b. Irrespective of past designations, petitioner workman agrees to the appointment as Badli Coal Filler afresh on Coal filling where coal filling is available and need not be the same place where the workmen was last employed.
- c. The petitioner workman agrees for observation of one year with minimum mandatory 20 musters every month and review every three months on coal filling only is absolutely essential. In the event of any short fall of attendance during the 3 months period, his services will be terminated without any further notice and enquiry.
- d. Respondent Management agreed that any forced absenteeism on account of mine accidents/natural disease, treatment taken at Company's Hospitals will be deemed as attendance during the trial period.
- e. All other usual terms and conditions of appointment will be applicable i.e., transfer, hours of work, day of rest, holidays etc., for appointment afresh.

This LCID is disposed of accordingly. The respondent management is directed to take him back to duty as Badli Coal Filler afresh.

In agreement of the above, the parties/counsel have affixed their signatures/thumb impressions in the presence of the members of this Lok Adalat Bench.

Sd/. Illegible

Sd/. illegible

Signature of Applicant(s)

Signature of Respondent(s)

Sd/. illegible

Sd/. illegible

Signature of Counsel for Applicant(s)

Signature of Counsel for Respondent(s)

Sd/. illegible

Signature of Presiding Officer & Members of the Bench

1.

2.

3.

**Note:** This award is final and binding on all the parties and no appeal shall lie to any court as per Section 21(2) of LSA.Act 1987.